

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
TO THE
GOVERNOR OF THE STATE
OF ALABAMA



FOR THE PERIOD
FROM OCTOBER 1, 1934
TO SEPTEMBER 30, 1936

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Hon. Bibb Graves,
Governor,
CAPITOL.

My dear Governor:

I transmit herewith Biennial Report of the Attorney General for period beginning October 1, 1934 and ending September 30, 1936. This report speaks for itself.

I am deeply grateful for the excellent services accorded the State by the Assistant Attorneys General, both special and regular.

A detailed analysis of the functions and duties of this office during my administration, together with a list of the Assistant Attorneys General and the Circuit Judges and Solicitors, will be contained in the Biennial Report of the Attorney General for the period beginning October 1, 1936 and ending September 30, 1938.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

ATTORNEYS GENERAL OF ALABAMA

1819-1936

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Pelham	1836
Lincoln Clarke	1838
Matthew Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1850
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907
Robert C. Brickell	1911
William L. Martin, Jr.	1915
F. Loyd Tate	1918
Emmett S. Thigpen	1918
J. Q. Smith	1919
Harwell G. Davis	1921
Charlie C. McCall	1927
Thomas E. Knight, Jr.	1931
A. A. Carmichael	1935

*

Note: For many years, and until Feb. 20, 1866, the law required the Attorney General to act as solicitor for the circuit in which the seat of government was located.

OPINIONS

October 5, 1934.

Hon. John A. Schneider,
Chief Clerk, Secretary of State,
Capitol.

Certification of Emblem by Executive Committee of Political Party; Names of said committee can be affixed to the letter containing the certificate by means of a typewriter.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of June 29, 1934 in which you request an opinion of this office as to whether or not you can accept a letter from the Executive Committee of a political party certifying to you the adoption by them of an emblem where the names of the Executive Committee are not affixed to the letter by the handwriting of each individual member of the said Committee but are placed on the letter by means of a typewriter.

I know of no law which requires that each individual member of the Committee shall sign his own name and I am of the opinion you should accept the letter and certificate if it has been filed with you.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 5, 1934.

Hon. P. B. Jarman, Jr.,
Secretary of State,
Capitol.

Party Emblem—not to be printed on ballot where said party has failed to file with the Secretary of State any candidate to be elected at said election.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of September 25, 1934 in which you ask the following question:

Can the Secretary of State certify to the Judges of Probate the party emblem of a new party to be placed on the ballots for the General Election when no names appear under the party emblem for the different offices.

I have carefully examined Article 9, Chapter 19, Code of Alabama, 1923, which prescribes the rules and regulations governing the formulation and printing of ballots to be used in elections in this State. While the law prescribes that each political party shall furnish to the Secretary of State an emblem adopted by said party and that the Secretary of State shall in turn certify to the Judge of Probate the fact of adoption of the said emblem by the political party filing the same, I am of the opinion that no political party has the right to demand that only its emblem be printed upon the ballot. If said political party has not nominated candidates and certified the names of those candidates to your office as prescribed by law, then it is my opinion that that political party has no right to demand an emblem, which has been adopted by them and which has been sent to you to be printed upon the ballots to be used in an election in this State.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 6, 1934.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
Capitol.

Where the statute provides that the Secretary of State shall certify the name of any qualified elector who has been requested to be a candidate for any State or district office by written petition signed by at least three hundred electors, it is the duty of the Secretary of State to reasonably satisfy himself that of the names signed to such petition at least three hundred are electors of the State or district in which that person seeks office.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 5, 1934, in which you state:

"Referring to Section 462 of the Code, please advise whether I am under any duty, when a petition requesting one to become a candidate is filed with me, to ascertain whether those who signed the petition are qualified electors, and if so what duty."

In reply I advise that the portion of Section 462 pertinent to your inquiry is as follows:

"The Judge of Probate shall also cause to be printed upon the ballots the name of any qualified elector who has been requested to be a candidate for any state, county, municipal or federal office by written petition signed in case of a candidate for a state or federal office, by at

least three hundred electors. * * * In case of a person to be voted for by the electors of the whole state . . . the certificate of nomination or the petition must be filed in the office of the Secretary of State not less than thirty days before the day of election."

You will therefore observe that the only provision in the statute is that the petition must be signed by three hundred electors. It is my opinion that before certifying the name of such candidate you should reasonably satisfy yourself that of the names signed to the petition three hundred are electors of the State or of the district in which the office is sought. Presumably the certificate of the Probate Judge or Judges to that fact would be the best evidence.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 12, 1934.

Hon. W. T. Alison, Chief Clerk,
Tobacco Tax Department,
The State Tax Commission,
Capitol.

Wholesalers, jobbers, manufacturers of tobacco products not entitled to discount on stamp not placed on tobacco products for their individual use.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your recent letter, the pertinent parts of which are as follows:

"Please advise if this Department can, under Section 7 of the Tobacco Tax Act, allow R. D. Burnett Cigar Company of Birmingham, Alabama, to affix Alabama Revenue stamps to cigarettes and taxable tobaccos for Hill Grocery Company of Birmingham charging them the face value of the stamps for this service.

"R. D. Burnett Cigar Company is a wholesaler of cigarettes and tobacco products and is allowed the legal discount in purchasing Alabama Revenue Stamps.

"Hill Grocery Company operates a chain of retail grocery stores in Alabama, and while they buy their cigarettes and tobacco products direct from the manufacturers, they are not entitled to a discount in purchasing Alabama Revenue Stamps."

I am of the opinion that your question should be answered in the negative.

That part of Section 7 of Act No. 113, H. B. 82 (General Acts 1932, page 114) which is pertinent to your inquiry is as follows:

"In case of Business License Stamps, made by the State Tax Commission to any wholesalers, jobbers, or manufacturers (for their individual use) the Tax Commissioner shall allow the following discount: On a sale of \$100.00 or over and less than \$200.00 a discount of three (3) per cent on the entire amount of the sale; on a sale of \$200.00 or more, a discount of ten (10) percent on the entire amount of the sale."

Section 8 of said Act, supra, is as follows:

"Section 8.—Definition of 'Wholesaler,' 'Retailer' and 'Stamps.'—(a) The phrase 'Wholesale Dealer,' as used in this Act shall include persons, firms, or corporations who sell any one or more of the articles taxed herein, to licensed retail dealers for the purpose of re-sale only. (b) The phrase 'Retail Dealer' shall include every person, firm or corporation other than a wholesale dealer, as defined in this Section, who shall sell or offer for sale any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales; and all persons operating under a retail dealers license. (c) The word 'Stamps' as used herein means the stamp or stamps by the use of which the tax levied under this Act is paid. (d) No person, firm, corporation, association or co-partnership operating two or more retail store or mercantile establishments within this State under the same ownership, supervision or management, shall be included within the meaning of the words 'wholesaler, jobber or manufacturer,' as the same are used in this Act. This provision is made in the exercise of the police power of the State, as well as for the purpose of raising revenue."

In my opinion, the Legislature by the use of the words "for their individual use" clearly intended that a wholesaler, jobber or manufacturer should not be entitled to a discount on stamps purchased from the State Tax Commission which stamps are not used on tobacco products sold by the manufacturer, jobber, or wholesaler. There is no doubt of the fact that the wholesaler would be entitled to the discount if the goods had been sold by him to the retailer.

The State Tax Commission has not engaged or employed the R. D. Burnett Cigar Company to sell stamps as is provided in that part of Section 7 which reads as follows:

"The State Tax Commission is hereby authorized to engage any person, firm, or corporation to sell tax stamps, and shall allow as compensation for receiving, selling and accounting for such stamps, three (3) per cent."

The wholesaler in the case at hand not having been engaged to sell stamps is in my opinion entitled to a discount only when the stamps are attached to tobacco products for his own individual use, that is, to be sold by him.

In Section 8 of the Act, which I have heretofore set out, it is specifically

provided that "chain" stores shall not be considered as wholesalers, jobbers or manufacturers, thus prohibiting them from obtaining a discount on stamps bought from the Tax Commission to be placed on tobacco products shipped in from out of the State.

In my opinion the words "for their individual use" were placed in said Section 7 for a very definite purpose, namely, to prevent retailers from having their goods shipped direct to them from the manufacturers and then having a wholesaler or jobber divide the ten per cent commission with them. This would enable a retailer to obtain tax stamps at a lower rate than the Act anticipated and would enable the wholesaler or jobber to act as an agent of the Tax Commission without having been so authorized and also would enable him to receive a larger percentage than he would have been entitled to under the law had he been duly authorized to sell the tax stamps.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 13, 1934

Hon. C. D. Adkins,
Judge of Probate, St. Clair County,
Ashville, Alabama.

License on abstract companies discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 5, 1934, in which you state:

"There has recently been a question as to whether a licensed Attorney who also runs an abstract business is due to pay an abstract license or does his attorney license exempt him from paying the abstract license?"

I am unable to tell from the brief statement contained in your letter the exact facts upon which your inquiry is based. If the attorney is operating an independent abstract business and holding it out as an abstract business in itself, he would be due the license required of abstract companies. If on the other hand he is merely making abstracts as a part of his general law practice as is the custom with lawyers, he would not be due the license levied for the operation of abstract companies.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 13, 1934

Hon. J. H. Hard, Jr.,
State Comptroller,
Capitol.

Elections — Meetings of Board of Registrars for Special Registration.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 10, 1934, in which you request my opinion as to the proper construction of Act No. 56, H. B. 278, approved October 4, 1932 (Acts 1932, page 67) which deals with special registration periods. Said Act provides as follows:

Section 1. That Section 376 of the Code of Alabama, 1923 as amended by an Act of the Legislature of Alabama, approved August 20th, 1927, entitled: "An Act to amend Sections 375, 376, 387, 393, 402 and 403 of the Code of 1923" found on page 274 of the Acts of 1927, be, and the same is hereby, amended so as to read as follows: Section 376: — Special Registration: — In addition to the regular registration provided in this article, the Courts of County Commissioners, Boards of Revenue, or other courts of like jurisdiction of the several counties may make an order requiring the books of registration to be opened for five working days during the month of January, 1931, and each two years thereafter, and may also make an order requiring the books of registration to be opened for not exceeding five consecutive working days, beginning on the Third Monday in October, 1932, and thereafter may make an order requiring the books of registration to be opened for not exceeding five consecutive working days, beginning on the First Monday in August, 1934 and each two years thereafter, for the purpose of registering voters, except in Counties having more than 100,000 population, as shown by the last Federal Census, or any succeeding Federal Census, in which Counties the Board of Registration shall be opened on the Second Monday in December, 1928, Second Monday in February, 1929, Second Monday in April, 1929, Second Monday in June, 1929, Second Monday in August, 1929, and every two years thereafter, and remain in session six days at each of such sessions for the purpose of registering voters.

Section 2. This Act shall take effect immediately upon its approval by the Governor.

It is clear from the above that the special registration periods in counties of not more than 100,000 population are as follows:

(1) Five working days during the month of January, 1921 and each two years thereafter, that is, five days during the month of January in odd numbered years;

(2) Not exceeding five consecutive working days beginning on the third Monday in October, 1932;

(3) Not exceeding five consecutive working days beginning on the first Monday in August, 1934 and each two years thereafter.

In my opinion there is no authority to hold a meeting of the Board of Registrars on the third Monday in October, 1934 or to pay for same out of the State Treasury.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 16, 1934

Hon. J. H. Hard, Jr.,
State Comptroller,
Capitol.

Costs and fees — How payable in penitentiary cases.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 20, 1934 which is as follows:

Where a defendant is convicted and sentenced to the penitentiary, Section 3667 of the Code provides for certain stated items of cost to be paid out of the Convict Fund.

In a certain county of the state where the Fine and Forfeiture Fund has been abolished and all claims against the Fine and Forfeiture Fund as ordinarily arise are made payable from the General Fund of the county, the clerk of the Circuit Court on the determination of a criminal case where the defendant is convicted and sentenced to the penitentiary, issues an execution and places it in the sheriff's hands and on its return, "No property found", he and the sheriff make out their claims against the General Fund of the county for their respective costs in the case.

On the sending of the convict to the penitentiary a cost bill is presented for such items of costs as are authorized to be paid under Section 3667 of the Code and the Convict Department sends to the clerk the amount of costs due to be sent him as set forth in the cost bill. The clerk on receipt of this remittance from the Convict Department pays the same to the county treasurer, deducting therefrom five percent commission for such payment.

The law having provided specifically a method of payment of such items of costs by the Convict Department, the question arises upon which your opinion is requested, whether the clerk and the sheriff have any authority of law to present their claims to be paid from the General Fund of the County for any of these items in the cost bill which are payable by the Convict Department under Section 3667 of the Code.

If the clerk awaited the payment by the Convict Department of the items of cost belonging to him and to the sheriff under Section 3667 of the Code, there would arise no condition upon which he would have to pay the fees and costs of himself and the sheriff into the County treasury and consequently there would be no room for a claim of 5% commission.

There are certain items of costs belonging to officers which the Convict Department is not authorized to pay under Section 3667 of the Code and it is the custom prevailing in the county of the State that the execution having been issued for costs and returned "No property found," the officers make out their claim for the balance of the costs due them in the case over and above the costs of the case as paid to the clerk from the Convict Fund for proper distribution.

Please advise whether the clerk and sheriff have any authority of law to claim from the General Fund of the county in reference any greater amount of costs or fees in a case where the defendant is sentenced to the penitentiary than such an amount of costs and fees as would be over and above those items of costs paid by the Convict Department from the Convict Fund.

In answer to your first inquiry I am of the opinion that the clerk and sheriff have no authority to present their claims to be paid from the General Fund of the county in question for any of those items of cost which are payable by the Convict Department under Section 3667, Code of Alabama, 1923.. Such amounts are paid directly to the officers interested by the State Board of Administration and in no event should be paid into the county treasury or the Fine and Forfeiture Fund.

In felony cases where the defendant is sentenced to the penitentiary, defendant is not sentenced to any additional term to pay costs; however, execution may issue against defendant to pay the costs chargeable and if a sufficient amount is collected to pay the costs in full, the amount collected should be prorated to the parties entitled to same including the State Board of Administration. If execution is returned "No property found" then the officers are entitled to the balance of the fees due them out of the Fine and Forfeiture Fund (in the instant case the General Fund) that are not paid by the State Board of administration under Section 3667, Code of Alabama, 1923. — **Biennial Report of Attorney General, 1926-28, page 750; Opinions Attorney General, Book 15, page 251 (Off. Ed.).**

It appears that the foregoing is sufficient answer to your first inquiry.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 16, 1934

Hon. J. H. Hard, Jr.,
State Comptroller,
Capitol.

A trial tax is chargeable in cases under Sections 4766, 4767 and 4768 of the Code of Alabama, 1923, which has to do with forfeitures and destruction of contraband liquors and other property.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 6, 1934, in which you request my opinion as follows:

"Under Sections 4766, 4767, and 4768 of the Code where Court proceedings are had incident to the 'Forfeiture and destruction of contraband liquors and other property,' such proceedings being had in the Circuit Court of the County, is not a trial tax to be taxed and collected as other costs in the case under the provisions of Section 4½, approved September 15, 1919, entitled an Act to provide for the general revenue of the State of Alabama and as amended by an Act of the Legislature approved July 22, 1931, found in General Acts of Alabama, 1931, pp. 604-605, which requires that: 'A trial tax of \$3.00 be and the same hereby is imposed in case, civil, criminal and equity, which is now pending and which hereafter goes upon the Docket of any Circuit Court in this State.'"

It is my opinion that cases like the one you designate above carry with them the \$3.00 trial tax. Certainly cases of this character go upon the Circuit Court docket of various counties of the State and thereby carry with them the tax provided by Section 4½ of an Act approved September 15, 1919, entitled, "An Act to provide for the General Revenues of the State of Alabama," as amended by an Act of the Legislature approved July 22, 1931 (General Acts 1931, p. 604) which is as follows:

"A trial tax of \$3.00 be and the same hereby is imposed in case, civil, criminal and in equity, which is now pending and which hereafter goes upon the docket of any Circuit Court in this state to be taxed and collected as other costs."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 16, 1934

Hon. J. H. Williams,
Superintendent of Banks,
Capitol.

Instrument assigning mortgages on which privilege tax has been paid does not call for payment of privilege or license tax provided in Schedule 51 of Section 334 of the Revenue Laws of Alabama of 1929; but a conveyance of personalty and realty actually owned by the grantor does call for the payment of such privilege or license tax mentioned in said Schedule 51.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of October 4th has been received. Your letter follows:

"The Tennessee Valley Bank of Decatur, Alabama, which operates fifteen (15) Branches located in various Counties throughout the Northern Section of the State by proper resolution of its Board of Directors turned its business and affairs over to the State Banking Department on March 22, 1934, for liquidation and/or reorganization.

"Under the plan of reorganization an agreement was signed by approximately 84%, in value, of the depositors, creditors and stockholders of the bank, the plan of reorganization being authorized by Act of the Legislature approved by the Governor on September 9, 1932, known as the Powell Bill. Apparently, to successfully reorganize the bank it became necessary to divorce the deposit liability from the charter of the bank. In order to accomplish this purpose it appeared necessary to sell the assets of the bank, (which is authorized under Section 6307 of the Code of Alabama) to a mortgage loan company, which was organized for that purpose, (Valley Mortgage Company).

"The reorganization plan contemplates and authorizes the mortgage loan company to borrow funds from the Reconstruction Finance Corporation by the pledge of all the assets transferred to it by the Superintendent of Banks and in consideration of such transfer pass over to the Superintendent of Banks the entire proceeds of funds borrowed from the said Reconstruction Finance Corporation, the proceeds of this loan to be used for the purpose of paying the bills payable to the Tennessee Valley Bank, and all preferred claims and making a distribution to the depositors and common creditors.

"The depositors' and creditors' agreement provides that the deposit and any other liability shall follow the transfer of the assets into the mortgage loan company. The plans of reorganization have been approved by the Superintendent of Banks and by the Circuit Court of Morgan County, Alabama. A decree of the Circuit Court, authorizing the transfer and sale of the assets, including conveyance of real property from the Superintendent of Banks to the Valley Mortgage Company, has been granted.

"Such assets consist largely of loans secured by mortgages on real and personal property. Such assets are transferred to the Valley Mortgage Company by assignment.

"Among the assets, however, there are some pieces of real estate which are owned outright and title to which is in the bank. This property is conveyed by a deed conveying such right or interest as the bank may have. Such conveyances have been executed by the Superintendent of Banks and filed for record in the several counties.

"Based on the facts set out hereinabove, I desire to ask the following question:

"Are the Probate Judges of the Counties in which these several deeds of conveyance are recorded entitled to the privilege or license tax provided in Schedule 51 of Section 334 of the Revenue Laws of Alabama of 1929, as compiled by Russell P. Coleman; in other words, must the Superintendent of Banks, when recording these several conveyances, pay to the Probate Judge what is commonly known as a privilege or license tax?

"I wish to call your attention to the following:

"The Superintendent of Banks in the case of the real estate actually owned by the Tennessee Valley Bank, conveys this property to the Valley Mortgage Company in the ordinary way. As regards the mortgages held by the Tennessee Valley Bank, the title to these mortgages is placed in the Valley Mortgage Company by assignment. It would appear that Schedule 51 clearly exempts from payment of the privilege tax any assignment of the mortgages, but I am in doubt as to whether the privilege tax is due on the deeds conveying property actually owned by the bank."

We will not repeat the facts since they are set out in detail in the letter above.

Your inquiry involves a construction of Schedule 51 (p. 247 of the Revenue Laws of Alabama of 1929) of Section 334 at p. 201 of the Revenue Laws of Alabama, 1929.

In your letter you mention two classes of property to be conveyed by the Superintendent of Banks to the Valley Mortgage Company. One class of property consists of personalty and realty actually owned by the bank; the other class consists of mortgages held by the Tennessee Valley Bank as security for loans made by the Tennessee Valley Bank to various individuals.

The conveyance by the Superintendent of Banks to the Valley Mortgage Company of personalty and realty actually owned by the Tennessee Valley Bank, is subject to the payment of the privilege or license tax mentioned in Schedule 51. This conveyance is nothing more nor less than a deed from the Superintendent of Banks to the Valley Mortgage Company conveying personalty and realty owned by the Tennessee Valley Bank. When these deeds are recorded the privilege or license tax mentioned in Schedule 51 must be paid.

The conveyance by the Superintendent of Banks to the Valley Mortgage

Company transferring by assignment the mortgages on realty and personalty is not subject to the payment of the privilege or license tax mentioned in Schedule 51. These instruments fall under the influence of the following exception in Schedule 51:

" * * * * except the transfer of mortgages on real or personal property within this State upon which the mortgage tax has been paid. * * * * "

It is to be assumed that the Tennessee Valley Bank has already paid the privilege or license tax on these mortgages. The Superintendent of Banks is merely assigning to the Valley Mortgage Company all of the right and title of the Tennessee Valley Bank in or to these mortgages.

The deed of the Superintendent of Banks to the Valley Mortgage Company, in which personalty and realty actually belonging to the Tennessee Valley Bank is conveyed, is subject to the payment of the privilege or license tax, but the instrument showing assignment of the various mortgages on realty and personalty is not subject to the payment of such privilege or license tax.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

October 18, 1934

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

County from which prisoners are removed under order of the State Prison Inspector is required under Section 4861 of the Code, to pay for medical bills, drug bills and other necessary expenses connected with maintenance of removed prisoners.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of September 14th has been received together with copy of letter from Judge Duke of Opelika. Your letter and the letter of Judge Duke follow:

"The enclosed copy of a communication to me from Judge Lum Duke, Lee County, Opelika, Alabama, is self explanatory.

"For your convenience, attention is called to Sections 4808, 4854, 4855, 4860, 4861, 4862, 4863 of the Code of Alabama, 1923, and I specific-

ally ask your opinion on Sections 4808, 4861, 4862, 4863 regarding the matter set out in the letter from Judge Duke.

(Signed) GLENN ANDREWS,
State Prison Inspector."

"September 13, 1934

"Dr. Glenn Andrews,
State Prison Inspector,
Montgomery, Alabama.

"Dear Sir:

Your letter of September 10 to Mr. W. E. Holt, Sheriff of Lee County, has been referred by him to the Commissioners Court for reply.

"Mr. Holt is perfectly willing and will be glad to comply with your request in regard to taking, safeguarding and caring for the Russell County prisoners temporarily. But there is one thing about this matter that the Commissioners Court has directed me to discuss with you, and that is the matter of paying medical bills, drug bills, and other legal and sometimes necessary expenses connected with the caring for these prisoners.

"Once before this, Lee County cared for the prisoners of Russell County and the medical bills, drug bills, and other incidental and necessary expenses connected therewith had to be paid by this county, for the reason that Russell County would not pay them. Lee County to this day has never been reimbursed for such expense. We are therefore asking that some provision be made about this matter before you proceed to enforce your order.

(Signed) LUM DUKE,
Judge of Probate."

In answer to your question I beg to refer you to Section 4861 and to Section 4863 of the Code. Section 4861 provides:

"4861. Removal of prisoners on order of inspector. — In the event such instructions prescribed in the foregoing section are not carried out, and in the event the unsanitary or insecure conditions or overcrowding of prisoners, in the opinion of the inspector, warrant it, and in the event the sheriff or other keeper of any jail or prison fails to or cannot, comply with the law regulating the separation of white and negro prisoners and male and female prisoners, the said inspector may order any or all persons confined in such jail, prison or almshouse immediately transferred to the jail, prison, or almshouse of some other county, to be designated by the inspector. In the event of the condemnation of any jail under

this section in which are confined more than one hundred prisoners, the inspector may designate the Alabama State penitentiary as the most suitable place for removal of said prisoners and such removal shall be made by the sheriff of the county from which they are ordered to be removed, and the expense of the removal of the prisoners and the poor and the maintenance of the removed prisoners and paupers is to be borne by the county, town or city, from which said prisoners or paupers were removed, except the feeding of state and county prisoners." (Underscoring mine).

Section 4863 provides:

"4863. Penalty for refusal to obey. — If any sheriff, or member of a commissioners court or board of revenue, or chief of police, marshal or member of a city council, or other governing board or body, wilfully fail or refuse without good excuse, to obey such orders, such person or persons shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than five hundred dollars."

Especially do I invite your attention to the following portion of Section 4861:

" * * * * and the expense of the removal of the prisoners * * * * and the maintenance of the removal of the prisoners * * * * is to be borne by the county * * * * from which said prisoners * * * * are removed, except the feeding of state and county prisoners."

It is my judgment that the medical bills, drug bills and other legal and necessary expenses connected with caring for these prisoners must be paid by the county from which the prisoners were removed, except the feeding of such prisoners. The matter of feeding prisoners must be attended to by the sheriff of the jail to which the prisoners are removed. While Section 4861 does not specifically mention medical bills, drug bills and other incidental and necessary expenses, the whole spirit and tenor of this section is in that direction. Indeed, it would not require a strained construction of the word "maintenance", as used in Section 4861, to say that the Legislature in using this word intended to include the payment of medical bills, drug bills and other incidental and necessary expenses connected with keeping and maintaining such prisoners.

Yours very truly,
THOMAS E. KNIGHT, JR.,
 Attorney General.

October 18, 1934

Mr. Marvin Pearce, Member,
 Commissioners Court, Marion County,
 Winfield, Alabama.

Teachers and students of the various schools or institutions of Alabama are exempt from road service only when actually engaged in teaching or enrolled as pupils.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 9, 1934, in which you inquire as to whether or not school teachers and students are exempt from road service under an Act approved July 23, 1931, General Acts, 1931, page 644.

It is my opinion that students must be actually enrolled and attending school to be exempt from road duty if they are twenty-one years of age. It is also my opinion that teachers must be actually engaged in their profession to be exempt from road duty under the law above referred to. The fact that a person has a certificate to teach school would not of itself exempt him. Section 1 of the Act referred to which designates those persons exempt from road duty reads in part as follows:

"All duly and regularly enrolled students in educational institutions and all teachers thereat, who shall procure a certificate from the officer in charge of such institution to that effect."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 22, 1934

Hon. W. H. Quillin,
Judge of Probate, Franklin County,
Russellville, Alabama.

A Member of the House of Representatives must qualify with the Secretary of State and for his name to be placed upon the ballot to be voted on in the General Election, this name must be certified by the Secretary of State to the Probate Judge of the County of which this party is a candidate.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 15, 1934 in which you request my opinion as follows:

If a candidate for Member of the House of Representatives from this County fails to qualify with the Secretary of State in the time required by law, and the Secretary of State, in making his certification to me as Judge of Probate leaves the name of such candidate off the list of candidates to be placed upon the ballot, must I, as Judge of Probate, place this name on the ballot to be voted on in the General Election or should I refuse to do so?

The law recognizes a Member of the House of Representatives as holding a State office. See section 60 of an Act approved February 25, 1931 which is as follows:

Section 60. That the words and phrases in this Act shall, unless such construction be inconsistent with the context, be construed as follows: (a) The word "voter" shall have the same meaning as the word "elector"; (b) the words "primary" and primary elections" the primary nomination election provided for by this Act; (c) The words "election" and "General election" the general State and County election to be held in November; (d) the word "party" a political party or organization which, at the general election for State and County offices next preceding the Primary Election, cast more than twenty percent of the entire vote, as provided by Section 2 of this Act; and (e) Whenever the masculine pronoun is used in this Act it shall be construed as if both the masculine and feminine pronoun has been used; (f) The words "County office" or "County officer" shall include members of County Executive Committees of political parties, and County treasurers, County Superintendent of Education, Probate Judge, County Commissioners or Members of Boards of Revenue, Member of County Board of Education, Sheriffs, Tax Collectors, Justices of the Peace, Constable and like officers, Tax Assessors, Clerks of the Circuit Court, and all other officers who do not receive their compensation from sources other than the county, "County officers" or "County offices" do not include State Senators, Members of the Legislature, Circuit Judges, Circuit Solicitors, Congressmen, Members of the State Executive Committee of political parties, delegates to National political conventions, nor any officers whose compensation is paid by the State of Alabama or the United States.

True this is found in what is known as the General Primary law, but the principle is the same. It is simply a declaration by enactment of law and I cannot see any difference that it could make from the fact that it is found in the General Primary law. Let it be law pertaining to Primary Elections or to General Elections. I call your attention again to Section 32 of the same Act which is as follows:

Section 32. The Secretary of State, not less than thirty days, nor more than forty days, prior to each general election, shall certify to the Probate Judge of each county in the State a separate list of all the nominees of each party for office, except nominees for County offices, to be voted for by the voters of such County.

The certificate under this Section is the authority of the Judge of Probate for placing the name of any candidate on the ballot who is seeking a State office, and the Member of the Legislature having been declared a State officer and the above statute requiring the Secretary of State to certify such as candidates, if the Secretary of State fails or refuses to so certify them, the Probate Judge is without authority to place such name on the ballot to be voted on in the General Election.

Of course I am not holding that the aggrieved party would not have any

remedy at law to test this matter out. That is a question that I am not called upon here to decide.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1934

Hon. A. F. Harman,
Department of Education,
Capitol.

Schools — Compensation of members of Committee on Courses of Study.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 15, 1934 in which you request my opinion relative to the compensation and allowances of the members of the Committee on Courses of Study. You also wish to be advised as to the appropriation from which said compensation and allowances are to be paid.

The answers to your inquiries are governed by Sections 429, 455 and 459, School Code of 1927.

Section 429, *supra*, specifically provides that the Committee on Courses of Study shall receive the same compensation and expenses as that hereinafter provided for the members of the Textbook Committee. The compensation provided for members of the Textbook Committee is governed by Section 455, *supra*, which provides as follows:

455. The members of the Textbook Committee shall be paid the sum of ten dollars per day during the time they are engaged in such work, and in addition shall receive ten cents per mile for each mile traveled from their homes to the place of meeting and return, to be paid out of the revolving fund appropriated for the use of the State Board of Education. Such expenses shall be allowed for each meeting it is necessary to hold. Each member of the committee, before receiving funds for salary or expenses, shall make and swear to a statement of the number of miles traveled and the number of days engaged. When it becomes necessary to pay out any funds in accordance with the provisions of this section, the State Superintendent of Education shall make requisition upon the State Auditor, who shall draw his warrant upon the State Treasurer for the amount for which requisition is made.

You will note that the above quoted section specifically provides that the compensation and allowances therein enumerated shall be paid out of the revolving fund appropriated for the use of the State Board of Education. Said

proviso governs over Section 459, which provides for an appropriation out of the State Treasury to defray the per diem, traveling expenses, and other expenses incurred by the Textbook Committee and the Course of Study Committee. Special provisions relating to specific provisions control general provisions relating to general provisions, and things specially treated will be treated as exceptions to the general provisions. — *Herring vs. Griffin*, 211 Ala. 225, 100 So. 202. This is true although there is no specific provision as to the fund from which the compensation and allowances of the members of the Committee on Courses of Study are to be paid. Construing all sections of Article XXIII (Sections 426-460) of the School Code of 1927, which deals with the subject of textbooks, in pari materia, I am of the opinion that it was the legislative intent not only to provide for members of the Textbook and Course of Study Committees the same compensation and allowances, but also that both should be paid in a like manner and out of the same fund.

In view of the above, I am of the opinion that the per diem and traveling expenses incurred by the Committee on Courses of Study are paid out of the revolving fund appropriated for the use of the State Board of Education and not out of the General Fund of the State. I am further of the opinion that each member thereof is entitled to be paid only the sum of \$10.00 per diem during the time he is engaged in his work and in addition ten cents per mile for each mile traveled from his home to the place of meeting and return. This is the only compensation and allowance provided for said members.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 29, 1934

Hon. A. H. Arrington,
County Attorney, Montgomery County,
Montgomery, Alabama.

Counties — Appropriations for maintenance, construction and repair of State Highways.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 22, 1934 in which you request my opinion as to whether or not the Board of Revenue can expend any county funds, not otherwise appropriated, to the work of installing what are known as "Highway Guide Lights," being in the nature of reflectors, on a part of the State Trunk Highway, located within Montgomery County, provided the installation of said lights has the consent and approval of the State Highway Department. You state that the Board seems to be of the opinion that the reflectors would add to the safety of the public traveling the highway, and that such reflectors are considered an admirable safety device.

I am of the opinion that your inquiry should be answered in the affirmative.

Counties may make appropriations of county funds in aid of the construction of a road by the state. — Biennial Report of the Attorney General, 1930-32, page 462.

The gas tax may be expended by the Courts of County Commissioners or Boards of Revenue for the construction, repair or maintenance of a part of the State Trunk Road in a county under an agreement with the State Highway Department. — Section 23, Highway Act of 1927; Biennial Report of Attorney General, 1930-32, page 992.

Under Section 27, Highway Act of 1927 (Acts 1927, page 356) counties are authorized to enter into contracts with the State Highway Department for construction, repair or maintenance of roads, bridges or highways in the State. — Biennial Report of Attorney General, 1930-32, page 1001.

In my opinion the installation of the so-called "Highway Guide Lights" is such a part of the construction or maintenance of a highway as to come within the purview of the opinions above cited. Therefore, Boards of Revenue, Courts of County Commissioners, or other like governing bodies may appropriate county funds for said purpose, provided same is done with the consent and approval of the State Highway Department and in conjunction with said department.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

November 5, 1934

Hon. W. P. Shirley,
License Inspector, Montgomery County,
Montgomery, Alabama.

When privilege licenses become delinquent and due.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 2, 1934 in which you request my opinion as follows:

"Suppose a party is due a privilege license which is delinquent midnight October 31st, and he puts the money or check in a letter and mails it to the Judge of Probate of his County; the letter does not reach the office of the Judge of Probate until the next day some time, November

1st. Would the Judge of Probate be authorized to issue a license and receive the check or money which reached him some time during the day of November 1st?

"2nd. Suppose the same party owes a license, mails check as stated above, but after midnight of October 31st the License Inspector serves him with delinquent notice, before the money or check reaches the Judge of Probate's office, would the License Inspector be entitled to his fees and other delinquent costs connected with such case?"

In answering your first and second inquiries, I call your attention to Section 303 of the Revenue Laws of Alabama of 1923, p. 227. The latter part of said section reads as follows:

" * * * For performing the duties required by this section, the license inspectors are entitled to be paid by the delinquent, in addition to the license, fifteen per cent of the amount of the license so collected from each delinquent, which must be paid in all cases if report has been made to the judge of probate of such delinquency, and if a criminal prosecution shall be commenced either by affidavit and warrant, or information or indictment, the license inspector shall be paid fifteen per cent of the penalty thereafter prescribed in such case, all cost and penalty to be paid in money, but in all proceedings under this Act, the license due October 1st shall not be delinquent before the first day of November of each year * * * ."

You will note from the above that the law prescribes, among other things, that the privilege license, that is, license for doing business becomes due on the 1st day of October of each year and becomes delinquent midnight October 31st following. Therefore, if a person, firm or corporation has failed to take out said license at midnight of October 31st of any year, said license becomes delinquent and if the license inspector has filed notice with the Judge of Probate, then the penalties prescribed by this section become attached.

The law says they must be paid on or before the 31st day of October of each current year. Therefore, if a party neglects to pay this license until the last day, viz. the 31st day of October, and on that date mails to the Judge of Probate the amount of said license either by check or money and the check or money does not reach the Probate Judge until the day following which is November 1st and the Probate Judge has been notified in the meantime of his delinquency, then, in that event, the Judge of Probate cannot accept the money or check and issue the license as the penalties have already attached.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 6, 1934

Hon. J. L. Appleton,
County Superintendent of Education, Shelby County,
Columbiana, Alabama.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 23, 1934 in which you request my opinion as to whether or not the cost of printing of certain attendance report forms is paid out of school funds or county funds. You state that said forms are used for the purpose of effectuating the enforcement of the Compulsory Attendance Law.

I am of the opinion that the cost of printing the forms in question is payable out of the school funds. Such is no part of the regular office expense of the County Superintendent of Education, which is paid by the county under Section 169 of the School Code of 1927. It is purely a scholastic expense and properly payable out of the school funds. — See **Biennial Report of Attorney General**, 1928-30, page 151.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

November 6, 1934

Hon. J. M. Gray, Chairman,
Walker County Commission,
Jasper, Alabama.

Counties — Payment of commission for marketing county bonds.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 24, 1934 in which you state that Walker County has authorized the issuance of six per cent bonds for the purpose of paying off at maturity certain warrants now outstanding. You further state that a banking house has offered to prepare the bond blanks, obtain the approving opinion of nationally known bond attorneys and guarantee the county to sell said bonds, and charge a small fee of two per cent for doing this work.

In view of the above, you request my opinion as to whether or not the county would have the legal right to pay the commission in question.

I am of the opinion that your inquiry should be answered in the affirmative.

The preparation of the bond blanks, the securing of legal opinion relative to the bonds, and the selling of same are, in my opinion, necessary in-

cidentals to the consummation of the purpose of the bond issue. Therefore, the county would have the authority to pay a commission for these services.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

November 7, 1934

Hon. Seth P. Storrs, Commissioner,
Department of Agriculture and Industries,
Capitol.

Agriculture and Industries — Gasoline inspection fee on inter-state commerce sales.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 17, 1934, in which you request my opinion upon the application of Chapter XX of the Agricultural Code of 1927 to the powers of the Commissioner of Agriculture in respect to the following:

1. Can the Commissioner require persons or corporations outside of the State shipping gasoline into the State for sale or offering for sale, to file the statements, including number of gallons of gasoline shipped into the State, under Section 178 of said Code?
2. Can the Commissioner require such persons or corporations shipping gasoline into the State for sale or offering for sale, to pay the inspection fee provided in Section 185 of said Code?
3. Can the Commissioner collect such inspection fees from such shippers in cases where such gasoline is delivered direct to counties and municipalities or to corporations or persons for official or individual use and not for re-sale?
4. How may the Commissioner proceed legally to collect such inspection fees from such non-resident shippers and how may the penalties provided in Section 103 of said Code be enforced against such shipper?

Definite answers to your inquiries depend on whether or not the sales in question are consummated within the State of Alabama. If they are, the provisions of Article XX of the Agricultural Code of 1927 are applicable. If not, there is no method whereby the statements may be required or the inspection fees charged and collected.

The fact that the sales in question are interstate commerce has no bearing on the situation. States, in the absence of congressional action, may, in the exercise of their police power, pass reasonable and undiscriminating laws for the inspection of articles, which are properly the subject of inspection, although such laws incidentally affect interstate or foreign commerce. — 12 *Corpus Juris* 52.

Also, the fact that the buyer and direct consumer is exempt from taxation is immaterial. The inspection fee, which is not a revenue measure, is paid by the seller and not by the buyer or consumer. The fact that the buyer or consumer is not subject to taxation does not exempt the seller from the payment of the fee in question. — *Opinions of Attorney General*, Book 14, p. 300 (Off. Ed.). This is likewise applicable to the provisions of Article XX, *supra*, which require the filing of statements, etc., by sellers of gasoline, etc.

Therefore, in my opinion, if the sale is consummated within the State, the seller is subject to the provisions of Article XX, *supra*, although the sale is interstate commerce or the buyer is exempt from taxation. However, if the sale is not consummated within the State, the provisions of said Article do not apply as they are applicable only to sales in the State.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 7, 1934

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of Motor Carrier Act of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letters of August 8th and 13th have been received. Your letters follow:

"August 8, 1934.

"At the request of this Commission, I am enclosing herewith reports from two employees in the Motor Bus and Truck Division of the Commission concerning the delinquency of six motor truck operators operating under H. B. 113 — Tidwell, approved Oct. 28, 1932. You will note that each of these operators has either failed to keep his insurance in force, pay his mileage tax, or file his equipment report. In some instances, the operator has failed in each respect to comply with the law.

"The Commission has not only written these men repeatedly, but has sent one of its inspectors out on the road to contact them personally. They state frankly that they are not going to comply with the law and in some instances they say the reason for this statement is they are not being given protection against other operators.

"We are sending a copy of this letter to the State Highway Director since the State Highway patrolmen operate under direction of that department.

"The Commission feels that probably not more than 25 per cent of the mileage taxes honestly due the State under the above mentioned Act and under the Alabama Motor Carrier Act of 1931, is being collected. After we have done all we can to bring about reasonable compliance with these laws we will bring such matters to the attention of the State's law enforcement authorities.

"We request you to take appropriate action in these matters."

"August 13, 1934.

"On Wednesday, August 8th, at the request of the Commission, Commissioner Morgan wrote to you enclosing data showing violations of H. B. 113 — Tidwell, approved October 28, 1932. Within the next day or so after this our Mr. J. O. Pruett called at your office and talked to Assistant Attorney General Carmichael about this matter. Mr. Carmichael was not satisfied with the details of the data furnished and requested that the facts concerning these violations be set forth more clearly.

"Pursuant to Mr. Carmichael's request, we are enclosing a memorandum of the facts taken from our files by our employees, Messrs. Pruett and Hall. The complete files are in our offices and will be readily available to Mr. Carmichael whenever he needs them.

"In order to keep the whole matter straight, we are also enclosing Commissioner Morgan's original letter of August 8th and two lists of these violators together with their respective addresses.

"While the mileage taxes collected by us are holding up fairly well, the fact remains that this state is far behind surrounding states in the collection of such taxes. As you well know, this Commission and its staff have no police powers and we are therefore helpless in forcing these operators to pay their mileage taxes, however, a penal bond is provided under this act and, should all other measures fail, we feel that suits should be instituted against these operators on these bonds.

"In conclusion we wish to say that if a conference of your department, the State Highway Commission and our department could be held with Governor Miller better understanding and better cooperation could be brought about."

You inquire about the collection of mileage taxes due the State under the Motor Carrier Act of 1932.

An examination of the Act reveals that authority to make arrests for violation of the Act is given to sheriffs, constables, policemen, State highway patrolmen and other arresting officers. The duty to supervise and regulate the operation of vehicles devolves upon the Alabama Public Service Commission. It appears that the Commission has power and authority and is charged with the duty to keep all necessary and proper records in regulating these carriers and in collecting the taxes fixed by the Act. All other agencies and officers must rely upon the records furnished by the Public Service Commission.

The Attorney General's office will furnish every assistance to you in the administration of the Motor Carrier Act. In doing this the office of the Attorney General must rely on your records and upon the information you furnish. The Act authorizes your department to prescribe the system of records to be kept by motor carriers for the purpose of ascertaining or calculating the taxes due the State, and the Act also authorizes the Commission to examine or have examined these records, at reasonable times, for the purpose of determining whether or not the correct amount of taxes has been paid, and if not, how much is due.

The information which you furnish this office, as regards the nonpayment of mileage taxes by the motor carriers, does not disclose the amount of taxes the carriers are due the State.

In proceeding to collect these mileage taxes, by civil suit, it will be necessary for this office to know, and for you to furnish proof of, the amount each carrier owes; or, at least, that they owe a definite amount. If you will be good enough to furnish us this information, and if you will be prepared to make proof of it in court, we shall be very glad to institute suit. We are sure you will appreciate our position in this matter. We do not wish to institute a number of useless suits. It do not think we could proceed on the information given us in your letter or the information given us by your representatives in the office a few days ago.

So far as criminal violations are concerned, and prosecutions therefor, it appears that the following would be the course you should pursue: Turn over to the highway patrolmen such information of violations as is furnished by your records. These patrolmen should proceed to deal with such violations in the manner such matters are usually handled. We believe the solicitors, both county and circuit, will render any assistance possible to these highway patrolmen. We believe the various arresting officers will be glad to assist the highway patrolmen. If the Commission desires to institute criminal proceedings against any of the carriers the office of the Attorney General will be glad to assist in any way possible.

The Act authorizes the appointing of inspectors, and it would appear that the Commission should instruct the three inspectors now serving to examine the books and records of the motor carriers for the purpose of ascertaining whether they are paying the proper mileage tax. It is doubtful whether the State will ever collect these taxes in full unless this is done. We be-

lieve you should have some system of examining the books and records of these carriers regularly. We assume you desire copies of this opinion mailed to the Governor, Mr. McManus and Mr. Butler.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 10, 1934

Hon. Cyrus B. Brown, Chairman,
Montgomery County Board of Revenue.
Montgomery, Alabama.

Courts of County Commissioners and Boards of Revenue of the various counties may legally employ men now on the relief rolls of the Alabama Relief Administration for the purpose of maintaining and overhauling public buildings and for the purpose of constructing and maintaining the roads and bridges throughout the county.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

'This is to acknowledge receipt of your letter of November 9, 1934 wherein you request an opinion of this office as to whether or not the county authorities have the right to employ men now on the relief rolls of the Alabama Relief Administration and pay these men out of the county funds according to the work they do:

1. Can these men be paid out of the Road and Bridge Fund provided they work in maintaining roads and bridges?
2. Can these men be paid out of the Gasoline Fund for maintaining roads?
3. Can these men be paid out of the General Fund when they are worked in maintaining or overhauling such public buildings as court-houses, jails, etc.?

I am of the opinion that all of your questions should be answered in the affirmative. Section 6759, Code of Alabama, 1923 reads as follows:

6759. The courts of county commissioners and courts of like jurisdiction of the several counties of the State of Alabama are vested with the following authority in connection with and in addition to any authority, general or special, heretofore vested in them by law. For and on behalf of the respective counties which they represent, courts of county commissioners and courts of like jurisdiction may contract for and take over, by lease or otherwise, the operation of bridges over navigable or

other streams and may maintain the same as public highways and may expend county funds in the pursuance of such contracts, whether for the purpose of such leases or for the payment of the cost of maintenance or for liability accruing to such county, or to the owners or lessors of such bridges on account of accidents or injuries that may arise from such operations.

The above quoted provision of law, in my opinion, is specific authority for the Courts of County Commissioners or Boards of Revenue to pay these men out of the Road and Bridge Fund when they are actually engaged in work upon the roads and highways of the county.

There is no doubt as to the legality of paying these men out of the Gasoline Fund when they are actually employed in the construction or maintenance of highways of the county. It is my opinion that Act No. 289, H. B. 671, General Acts 1932, page 283 is specific authority for the payment of these men out of the General Fund of the county. Said Act is as follows:

Section 1. That the Court of County Commissioners, the County Board of Revenue, or other governing body in any county shall have the power and authority, with the approval of the State Child Welfare Department, to make other or further provision for the care of the poor and needy of each or either of the counties. The disbursement of any funds to be made through such agencies and in such manner as may be approved by the State Child Welfare Department.

Section 2. This Act shall take effect immediately upon its approval by the Governor.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 18, 1934

Hon. S. M. Cobb, Clerk,
Circuit Court of Wilcox County,
Camden, Alabama.

Costs.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 21, 1934, in which you submit the following questions:

"1. Is there any limitation fixed by law which bars claims of a Circuit Court Clerk for fees due him from the County? If so what is the time limit?

"2. Is there any limitation fixed by law which bars claims or a Circuit Clerk for fees due him from the county in cases wherein indictments have been properly ordered, withdrawn and filed? If so, what is the time limit?

"3. Is the Circuit Court Clerk entitled to the fee fixed by law for issuing the copy of a subpoena for a witness? That is to say, is the Clerk entitled to charge for making and issuing the subpoena served on the witness as well as for making and issuing the subpoena for the same witness upon which the Sheriff makes his return to the Court?

"4. Is a Circuit Court Clerk entitled to 25c for entering a final judgment in state fail and nol pros cases when the same is actually entered? Is a Clerk entitled to this 25c fee for such final judgment entry for each defendant in cases where two or more defendants are jointly indicted?

"5. Are Circuit Court Clerks and Sheriffs entitled to their fees as fixed by Section 3739 of the Code of 1923 which are not paid them under Section 3667 of the Code of 1923?

"6. Where an opinion is rendered by the Attorney General of Alabama, and later the opinion is withdrawn or recalled, are the officers affected by such opinions protected as to fees collected upon the faith and credit of the first opinion during its life or up to the time of its recall?

"7. Has the Court of County Commissioners authority to allow or disallow claims against the County of officers for fees? Has such Court authority to compromise and settle such claims under Section 6755 as amended by the Acts of 1927 and 1931?

"8. Has the Court of County Commissioners authority to grant officers indebted to the County the privilege of paying such indebtedness in installments where such indebtedness is due the general fund?

"9. Are the Sheriff and Clerks entitled to their fees for services performed in jail sentences in lieu of fines and said defendants are not sentenced for the costs?

Before answering specifically the questions above submitted, it is deemed proper to consider in a general way certain provisions of law as set forth in the statutes governing the fees of Clerks and Sheriff, and the costs attaching in the trial of criminal cases.

Under Section 3740 of the Code of Alabama, 1923, it is provided that the costs in the case must be taxed against the defendant on conviction, or against the prosecutor as provided by Section 8684 of the Code and collected by execution. It is further provided that in all trials in the Circuit Court, or County Court where the State fails to convict, or the indictment abates, or is nolle prossed or withdrawn, the fees of the Sheriff and Clerk of the

Courts shall be paid out of the Fine and Forfeiture Fund; but the Sheriffs and Clerks must make affidavit before the Circuit or Probate Judge of the amount due them and the right of the Sheriffs and Clerks to such payment of their fees shall be postponed to the rights of State witnesses as they now exist.

Under Section 4039 of the Code provision is made for payment of officers' claims arising in criminal cases in which the defendant is not convicted and the costs are not imposed upon the prosecutor, or in which the defendant had been convicted, or has been proved insolvent by the return of execution, "no property found", or in cases where the State enter a nolle prosequi, or where the indictment has been withdrawn or filed, or the prosecution has been abated by the death of the defendant.

These provisions of law apply generally to officers' fees arising in all criminal cases, and are to govern so far as payment of such fees may be concerned, except where particular provision for the payment of costs under such conditions has been made by local legislation governing particular counties.

Under the provisions of Local Act of the Legislature found at page 103, Acts of the Legislature 1892-1893, which has particular concern as to the method of payment of witness fees and the fees of the Clerk and Sheriff of Wilcox County, and specifically regulates the method of payment of such fees, payment thereof was no longer to be made from the Fine and Forfeiture Fund of the County, but from the General Fund of said County. Section 8 of said Act is as follows:

"Be it further enacted, that the fees accruing to the Sheriff and Clerk shall be paid out of the General Fund of said County, as other claims are **paid when audited and allowed by the Court of County Revenue**, shall be preferred in the same manner as is provided for the payment of witnesses."

Sections 1, 2, 3 and 4 of said Act provide for the payment of witnesses summoned and attending on behalf of the State in all criminal cases in the Circuit and County Courts of Wilcox County, and that they be paid from the General Fund of said County. Section 3 of said Act makes particular provision that the Clerk of the Circuit Court shall enter in a book to be kept for that purpose a certified list of all the certificates issued by him and the foreman of the grand jury during the term of Court, showing to whom issued, the case in which he attended and the amount due him and for making said list, the clerk of said Court shall receive two cents (2c) for each certificate so entered in said book to be paid by the County, the list so prepared being delivered to the County Treasurer and kept by him and being the basis upon which the County Treasurer pays such witness certificates.

Under Section 6 of said Act, transfer is required of any and all funds then in the Treasurer's hand or thereafter to accrue and to come into the hands of said Treasurer, as ordinarily belonging to the Fine and Forfeiture Fund, to the **General Fund of the County**.

The intent and result of this Act were to make all claims of Sheriff and

Clerk of Wilcox County, claims against the General Fund and to be considered by the Commissioners Court or county governing body as other claims against the General Fund are considered for payment.

The preparation of the claims of Clerk and Sheriffs is governed by the latter part of Section 3740 of the Code, which provides that such officers must make affidavit to their claim before the Circuit and Probate Judge of the amount due them, the statement of such claims being provided under Section 4040 of the Code. The claims of these officers being claims against the General Fund of the County and to be "audited and allowed by the county governing body," under the provisions of the Local Acts of 1892-1893, and paid as other claims against the General Fund of the County, are governed in their consideration by the laws pertaining to claims against the General Fund of the County.

Section 225 of the Code of Alabama provides that no claim against the County shall be passed upon or allowed by the county governing body without the same being itemized and sworn to by claimant, etc. Section 228 of the Code provides that "all claims against the county must be presented for allowance within twelve (12) months after the time they accrue, or become payable or the same will be barred."

Section 225 provides that the Court of County Commissioners must in term time audit all claims against their respective counties.

With these general principles of the law governing and set forth above, your specific questions are answered consecutively.

1. Yes. The claim of the Circuit Court must be filed within one year from the date of its accrual or the same is barred, such claim being a claim against the General Fund and governed by the requirements of Section 8 of the Act of the Legislature 1892-1893 above mentioned, and by the requirements of Section 228 of the Code of Alabama, 1923.

2. Yes. The claim must be filed with the county governing body within twelve (12) months from the date indictment is withdrawn and filed.

3. Under Section 6724, subdivision 1 of the Code, the clerk is required to sign and issue all summons, subpoenas, etc., under the authority of the Court. Under Section 5617 of the Code, the Clerk must issue subpoenas for all witnesses on the part of the State, etc. Under Section 3739 the clerk receives pay of 25c for each subpoena issued. There is no authority of law for the Clerk to receive pay for a copy of said subpoena and charge the same as a part of his cost in a criminal case. There is no requirement of law for clerk to make copies of subpoenas which he issues and places in the sheriff's hands. For instance, if there are three witnesses in a criminal case to be subpoenaed in behalf of the State, the clerk would be entitled to receive pay for issuing only three (3) subpoenas.

4. The Clerk of the Circuit Court is not entitled to twenty-five (25c) for entering a final judgment in "State failed" and "nol pros'd" cases."

Section 3739 of the Code of Alabama does not enumerate such a fee in the fees listed which the clerk is entitled to charge in criminal cases. The Clerk of the Circuit Court is not entitled to this twenty-five cents (25c) fee for such final judgment entered for each defendant in cases where two or more defendants are jointly indicted and where the State fails to convict or there is a nolle prosequi in the case. The provisions of law for a clerk to receive a fee for entering judgments specifically states that such provisions cover the **entering of a judgment against each defendant** and where the State does not convict the defendant, or the State enters a nolle prosequi in the case, there is no judgment against the defendant. Where, in a case the indictment or the complaint is withdrawn and filed, there is no judgment against a defendant, unless the defendant is convicted. The fee for entering judgment is not for entering a judgment in a case, but for entering the judgment **against the defendant**.

5. Circuit Court Clerks and Sheriffs are entitled to the fees belonging to them in criminal cases as provided under Sections 3739 and 3741 of the Code respectively, and which are not paid them under the provisions of Section 3667 of the Code so far as applies to cases in which the defendant is convicted of a felony and is sentenced to the penitentiary, and such fees which are not so paid under Section 3667 of the Code, obtains an established right for payment by the issuance of execution and the return thereof "no property found."

In Wilcox County, giving regard to the Local Act of 1892-1893 above mentioned, claims of this nature must be filed within twelve months from the date of the execution "no property found." It must be borne in mind that the execution must be issued by the Clerk within the time provided by law and must be returned by the Sheriff within the time provided by law.

This office has advised in a number of opinions that there is no provision of law for the payment to the Clerk or Sheriff for any other fees in cases where the defendant is sentenced to hard labor for the County, than as provided under Section 3667 of the Code. Opinions concerning matters similar to this have advised that when a defendant is convicted of a misdemeanor, there are three (3) modes or methods provided by law, under either one of which the defendant may discharge his liability for the costs and fine in the case. The first is, by presently paying the fine and cost. The second is, by confessing judgment therefor. The third is, that in the absence of either payment of fine and costs, of the confessing judgment therefor, the Judge of the Court may sentence the defendant to hard labor for the payment of the fine and costs, and that the defendant not having availed himself of the privilege of either one of the first two methods of discharging his liability in the case, discharges his liability in said case by the performance of hard labor and having paid the fine and costs in hard labor, should execution be issued and collected from the defendant, there would be a double payment of such liability.

The object in issuing execution, is to realize on the amount of the judgment and if the defendant has discharged his liability for the judgment by hard labor, there would be no reason for collecting said judgment.

6. Under Section 568 of the Code of Alabama, it is provided that the Attorney General shall give his opinion in writing to county officers, among

them the Clerk of the Circuit Court, upon any question of law connected with the duties of the office, and under section 869 of the Code, it is provided that the written opinion of the Attorney General secured by a State or County officer, legally entitled to secure such opinion, shall protect such officer to whom it is directed from liability to either the State or County, because of any official act or acts performed as directed or advised in such opinion.

Incident to your particular inquiry, consideration is given the fact that on the 7th day of June, 1933, this office rendered an opinion to you in which it advised that you were entitled to claim for issuing "one original subpoena upon which the Sheriff could make his returns to be charged for by the Circuit Clerk in addition to each subpoena issued for the individual witness."

The idea advanced in such opinion was that in a case where two witnesses were to be subpoenaed, the Clerk would be entitled to issue three (3) subpoenas. This opinion was reconsidered and overruled in a subsequent opinion of date September 29, 1934. During that time, therefore, from the date of the first opinion mentioned to the date of the last opinion mentioned, where, in cases arising in such interim, the Clerk had claimed and received pay from the County Treasurer for issuing such extra subpoenas, having based his action on the opinion of the Attorney General, and having claimed through the Commissioners Court pay for such extra subpoenas set forth in his claim, which claim or claims were audited and allowed and ordered paid by the Commissioners Court, the Clerk would come under the protection of Section 869 of the Code to which reference above is made. This would apply, however, to only such cases as arose during such interim between the two opinions.

It may be said that on account of the provisions of law as provided in the Local Act of the Legislature, 1892-1893, above mentioned, and Section 228 of the Code, the Clerk would not have been authorized to go back through any years prior to the rendering of the first opinion and make out claims for any amounts which he had failed to claim against the county and even in the event he had done so, such claims could not have been considered and paid by the Commissioners Court for the reason **they were barred by law, more than twelve months having elapsed since their accrual.**

7. The Court of County Commissioners under the authority granted thereto to audit and allow claims against the Counties, has the authority to disallow any part of such claims which in the judgment of said Court is not proper or authorized by law or which is barred by lapse of time or which is erroneously claimed.

In further answer to question 7, the Commissioners Court, or the county governing body, has the authority under Section 6755, subdivision 11 of the Code to compromise on such terms as they may deem just, **all doubtful claims in favor of the county, when such claims arise on account of money heretofore paid in good faith by order of said court.**

It will be observed that this subdivision has to do only with claims which have already been paid by order of such Court. It does not have to do with claims which have not been paid. Claims of the clerk which have not been

paid and which are presented for audit and allowance by the Commissioners Court must go under the provisions of law applying to all other claims against the General Fund, bearing particularly in mind the expressed provision of law as set forth in Section 238 of the Code.

8. It is my opinion that where an officer is due to a County certain amounts ascertained to be due by said officer, the bond of such officer is liable for such amount due, together with the officer himself. If, however, the Court of County Commissioners in its judgment, and where an officer due the county a certain amount makes arrangement with said County for the payment of the amount due by securing the same to the satisfaction of the Court of County Commissioners, it is my judgment that such an arrangement for settlement by and between the Court of County Commissioners and the officer would be authorized.

9. The Sheriff and Clerk are entitled to fees for services performed where convicted defendants are sentenced to the county jail in lieu of fines and costs on the issuing of executions and the return thereof "no property found."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 17, 1934

Hon. Eugene W. Hawkins,
Probate Judge, Jefferson County,
Birmingham, Alabama.

Officers — Acceptance of less compensation than that established by law.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 26, 1934, which is as follows:

In December 1932, I addressed a letter to the County Commission of Jefferson County stating, in substance, that in view of the fact that the Legislature had not reduced my salary I would take a voluntary reduction of 25% of my salary for the remainder of my term, effective January 1st, 1933. In March, 1933, the Legislature passed a local bill fixing my salary at \$6,500.00 for the remainder of the term. In March, 1933, I rescinded my voluntary reduction and drew the full salary fixed by law for that month and for succeeding months.

Pursuant to my voluntary action, I accepted the 25% reduction for the months of January and February, 1933, and signed the following statement at the time:

"State of Alabama, Jefferson County, To the Treasurer of Jefferson County, Alabama: In order to voluntarily effect a voluntary reduction in my salary due from Jefferson County, Alabama, I do hereby give to the County the sum of \$208.33, and agree that voucher made to me for the current month's salary shall be 25% less than the amount allowed by law. Receipt of voucher in such reduced amount is hereby acknowledged and accepted in full of my current month's salary.

Eugene H. Hawkins."

In view of the fact that the consideration for the voluntary reduction failed, if it existed at all, and that my salary was reduced by law by a subsequent legislature to an amount greatly less than 25% for the remainder of my term, I feel that I am justified in asking for my full salary for the two months in question. Please advise whether or not, in your opinion, I am legally entitled to it. Also please advise whether I may deduct the amount from fees and commissions collected by me in this office.

Your inquiry presents two questions:

1. Whether or not you are entitled, under the law, to recover from Jefferson County the 25% reduction made in your salary for the months of January and February, 1933;

2. Whether or not, in the event you are entitled to collect such salary, you would be authorized under the law to deduct same from the funds in your hands belonging to Jefferson County.

I am of the opinion that your first inquiry should be answered in the affirmative.

The Legislature, by Act No. 286, H. B. 167, approved November 10, 1932 (General Acts 1932, page 280), authorized, among other things, county officers to make a voluntary reduction in their compensation. The Act prescribes the way and method by which this may be lawfully accomplished. It provides in Section 2 thereof that the reduction must be in writing, must set forth the amount of reduction, and the instrument must be acknowledged in the form prescribed by law for the acknowledgment of conveyances and must be filed in the office of the Judge of Probate of such county. The instrument quoted in your letter does not show that same was acknowledged or that it was recorded.

Since the reduction in question was not consummated as provided by law, I am of the opinion that same is invalid and ineffective. A statute directing a thing to be done in a particular manner implies that it shall not be done otherwise. — *Hall v. Blan*, 227 Ala. 64, 148 So. 601; *Opinion of the Attorney General to the State Tax Commission*, March 14, 1934.

It is contrary to public policy for an officer to accept or agree to accept a less compensation than that fixed by law. The acceptance of less compensation than that established by law for a public officer does not estop the officer from subsequently claiming the legal compensation. — 46 *Corpus Juris* 1027 and cases cited.

The Legislature recognized the fact that a public officer could not accept less than the legal compensation and they therefore changed the public policy of this State by the enactment of Act No. 868, supra. Since the statute in question is in derogation of the established public policy of the State, it must be strictly construed and all of its formalities complied with to make the reduction of the compensation of public officers binding. The instrument quoted in your letter, not being in the form required by law, in my opinion, is invalid and ineffective towards reducing your salary.

I am of the opinion that your second inquiry should be answered in the negative.

The general law of set-off and recoupment does not apply in this case. A Judge of Probate should make settlement of funds coming into his possession with the various state agencies to which such funds belong. He is not authorized to offset previous years overpayments or underpayments to any agency out of funds coming into his hands during the current year. — *Opinion of the Attorney General to Jefferson County*, June 28, 1934, see also *Shelton v. Blount County*, 202 Ala. 620, 81 So. 562.

The proper method for you to collect the amount due you by the county is to file a claim with the county for same.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

December 17, 1934

Hon. Cecil S. Jones,
Tax Assessor, Escambia County,
Brewton, Alabama.

Where party resides within the city limits at the time of liability for automobile license, he must assess and pay State, County and city taxes before such license can be issued if such taxes are otherwise due.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 9, 1934, in which you state:

"Please give me your opinion governing assessment of city taxes in following case:

"A party residing outside limits on October 1, 1934, acquired a car that was owned the preceding twelve months by a party residing outside city limits. The party that has purchased the car moved into city during October 1934 before he applied for 1935 tag. Now he is residing in city and is applying for tag. If I base my assessment on place of residence I must include city taxes in his assessment. He objects to paying city taxes. Kindly give me your opinion as to proper assessment."

In reply I beg to advise that Section 13, Acts 1927, page 139, provides in part that no license shall be issued for motor vehicles until "the ad valorem tax on such vehicles shall have been paid in the county for the preceding year as evidenced by a receipt of the Tax Collector where the owner of said vehicle resides." From the language of this statute it would appear that the assessment must be made at the place where the person resides at the time such motor vehicle is assessed, therefore making it incumbent on the applicant to pay city taxes as well as State and County.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 18, 1934

Hon. J. M. Gray, Chairman,
Walker County Commission,
Jasper, Alabama.

Counties — Court costs to test bond issue proper charge against.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 28, 1934, which reads as follows:

Prior to this date the County of Walker held an election called by the County Commission to determine whether or not the County of Walker should issue its bonds to finance through the FWA the building of a jail, almshouse, hospital and public roads. At said election the question was submitted to issue the bonds of the county with interest payable semi-annually. Thereafter the United States of America notified the County Commission that they desired the interest payable annually. It was arranged by two of the commissioners with Mr. J. M. Phillips to have a friendly suit, in which the said J. M. Phillips as complainant was to and did file in the Chancery Court to enjoin the Walker County Commission from issuing the interest bonds with interest payable annually instead of semi-annually and also to test some other questions in the proceeding. The said two members of the County Com-

mission agreed with the said J. M. Phillips that if he would permit the use of his name as complainant that the County of Walker would hold him harmless from court cost or other expenses. The case was filed in the Lower Court, where a decree was rendered sustaining a demurrer to the bill. Thereupon J. M. Phillips appealed the case to the Supreme Court and the Supreme Court affirmed the decree of the Lower Court. Nothing was placed on record or on the minutes of the County Commission relative to the agreement for the amount of cost until the 28th day of November, 1934. I am enclosing a copy of a resolution this day passed providing for the payment of the cost. Under these facts I desire an opinion from you as to whether or not the County of Walker is liable for the Court cost. I should thank you to let me have your opinion at an early date.

I am of the opinion that the court costs above mentioned are a proper charge against the county, same being a necessary incident to facilitate the purpose of the bond issue in question. Therefore, under the resolution which you attached to your inquiry, you would be authorized to pay said court costs.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

December 18, 1934

Hon. B. M. Miller,
Governor,
Capitol.

Governor's Contingent Fund — Use of for advertising the State, its resources and advantages.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 7, 1934 in which you request my opinion as to whether funds of the State appropriated to the Governor's Contingent Fund, can properly be expended in payment for advertising the State of Alabama, its resources and advantages, in a booklet form to be published and distributed at the Rose Bowl in California on January 1, 1935.

I am of the opinion that your inquiry should be answered in the affirmative.

Section 777, Code of Alabama, 1923 provides that the Contingent Fund may, in the discretion of the Governor, be used for the better enforcement of the laws of Alabama. Said provision is very broad in its scope. In my opinion, "the better enforcement of the laws of Alabama" includes the better enforcement of all laws of the state whether they be civil or criminal. It

also includes the better enforcement of the laws in spirit as well as to the letter.

Since there are laws on our statute books relative to advertising Alabama, its resources and advantages, the Governor's Contingent Fund may, in the discretion of the Governor, be expended legally for the better enforcement of these laws. The specific expenditure in question is such as to come within the perview of the above.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

December 28, 1934

Hon. Frank P. Morgan, Associate Commissioner,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of certain parts of Section 1 of the Alabama Motor Carrier Act of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of September 14 as follows:

"At the request of the Commission I am submitting a question which has been propounded to the Commission.

"The AB Company operates a cotton press and transportation service combined. Heretofore the transportation service has been entirely by river to Mobile. A complaint has now reached us that this AB Company is sending trucks into sections relatively remote from its headquarters and hauling cotton from these points to the compress free of charge with the provision that the cotton be compressed with the AB Company and transported by them to Mobile.

"The CD Railroad Company has complained to the Commission about this matter, and we therefore request that you render us an opinion as promptly as convenient for you to do so, as to whether or not the AB Company comes under the 1932 Contract Carrier Act."

As I understand the facts, they are as follows: AB operates a cotton press and transportation service combined, all within the State of Alabama. Heretofore the transportation service has been confined to river transportation. Recently the AB Company has added trucks to its transportation service and brings cotton to Mobile from all sections of Alabama. The consideration in part at least, for the transportation furnished, is an agreement with

the person whose cotton is transported that such person will have his cotton compressed by the AB Company.

Based on the facts as I understand them, it is my judgment that the compress company you mention falls squarely under the influence of the Alabama Motor Carrier Act of 1932, known as House Bill 113. In my judgment the compress company is not exempt.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 28, 1934

Hon. A. W. Davis,
Sheriff, Morgan County,
Decatur, Alabama.

Elections — Compensation for canvassing returns.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have a letter dated October 12, 1934, signed by A. A. Walton in care of your office, in which an opinion is requested of this office relative to the compensation of one appointed to help canvass the election returns for a County in a general election.

Canvassing election returns for a County is governed by Sections 510 and 511, of the Code of 1923. Said Sections made no provision for the compensation of one appointed to help canvass such returns and I know of no other authority of law providing for said compensation.

It is, therefore, my opinion that the party aiding in the canvassing of said returns is not entitled to compensation.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 29, 1934

Hon. H. E. Williams,
Supt. of Education, Lauderdale Co.,
Florence, Alabama.

Officers — One cannot hold office as Member of the County

Board of Education and as License Inspector at one and the same time.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 20, 1934 in which you request my opinion as follows:

If a member of the County Board of Education is appointed county license inspector, does the acceptance of the position as license inspector vacate his office as a member of the County Board of Education?

I am of the opinion that your inquiry should be answered in the affirmative. Section 280, Constitution of Alabama, 1901 provides as follows:

Sec. 280. No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds.

This office has ruled that a member of the County Board of Education holds an office of profit within the contemplation of Section 280, Constitution of 1901. — **Biennial Report of Attorney General, 1928-30**, page 12; **Opinions of Attorney General, Book 18**, page 98 (Off. Ed.). It has also ruled that a license inspector holds an office of profit within the contemplation of said constitutional provision. — **Biennial Report of Attorney General, 1930-32**, page 307.

Since both a member of the County Board of Education and a license inspector hold offices of profit under Section 280, supra, it naturally follows that if a person holds both of these offices at one and the same time, it would be violative of said section.

If the holding of two offices by the same person, at the same time, is inhibited by the Constitution or the Statute, a forbidden incompatibility is created similar in its effect to that of the common law, and as in the case of the latter, it is well settled by an overwhelming array of authority that the acceptance of a second office of the kind prohibited operates, ipso facto, to absolutely vacate the first office. It is the acceptance and qualification for the second office that vacates the first. — **Biennial Report of Attorney General, 1926-28**, page 105 and cases cited.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

December 28, 1934

Hon. W. B. Reeder,
Tax Collector, Lauderdale County,
Florence, Alabama.

Where property sold for taxes under name of other than owner,
sale is invalid.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of October 2, 1934 which is as follows:

"In my tax sale held on July 15th, 1932 for the 1931 taxes there was a piece of property sold for the taxes under the name of Claud Conner and in checking back over my records I find that the name should have been Claud Comer and not Claud Conner.

"We now have a man that wants to buy this property from the State as the time of redemption has expired. But he has raised the question as to whether or not this was a legal sale, and if the State could give a deed to the property.

"Please advise me in this matter as early as possible. If in your opinion this was not a legal sale please advise me what steps to take in the matter."

I refer you to the case of **Johnson v. Harper**, 107 Ala. 706 where the following rule was laid down by the Court: "We have many times said that in a sale of land for taxes great strictness is required. To deprive an individual of his property against his consent, every substantial requirement of law must be complied with. No presumption can be raised on behalf of a tax collector who sells real estate for taxes, to cure and radical defect in its proceedings; and the proof of regularity devolves upon the person who claims under the collector's sale. — **Clarke vs. Rowan**, 53 Ala. 400; **Oliver vs. Robinson**, 58 Ala. 46; **Cooley on Taxation**, pp. 472, 482, 517."

In view of the above rule and the strict compliance that is required to be made with all statutes incident to tax sales, I am of the opinion that you should proceed under Section 3134, Code of Alabama, which is as follows:

"3134. The state auditor shall examine carefully all certification of purchase of real estate, where the same were bid in for the state at tax sale, that are on file at his office, or that may be hereafter by him received, and if, in his opinion, such sale was erroneous for want of regularity paper of sufficient description, error in advertisement, or for any other course that may come within his knowledge, he shall so declare it, and return such certificate to the judge of probate in the county of such sale; he shall also notify the tax assessor of the county in which

the property is situated, and direct him to assess the same as an escape for the years in which it was subject under existing laws. But in no case where sales are declared erroneous or void by the auditor shall any penalty attach to the taxpayer, except interest on taxes, all cost accruing shall be paid by paid by the officer making the error."

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

December 26, 1934

Hon. Irby Pope,
Judge of Probate,
Marion, Perry County, Alabama.

Deed Tax — Only one deed tax required to be paid in partition proceedings.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 8, 1933, in which you state that Luther B. Sprott and his sister, Marguerite Sprott Tillman, owned a certain portion of land as tenants in common by virtue of the will of their father, J. M. Sprott, deceased. In order to effectuate a partition of said lands, Luther B. Sprott and wife executed a deed to Marguerite Sprott Tillman conveying to her his undivided one-half interest in part A of the said lands, and Marguerite Sprott Tillman and husband conveyed her undivided one-half interest in part B of said land to Luther B. Sprott. Each deed stated the nominal consideration of five dollars and further stated that the purpose of same was to equally partition the lands without court proceedings.

You request my opinion as to the filing tax due on recording the deeds in question under Section 21½ of Act No. 163, H. B. 359, approved July 28, 1927, (Acts 1927, page 163), known as the Revenue Act of 1927.

The answer to your inquiry is governed by that part of Section 21½, supra, which provides as follows:

"and, provided, further, that where several deeds or instruments are executed by tenants in common for the same consideration, only one of such instruments shall be taxable under this action."

Construing that particular part of the section above quoted, I am of the opinion that the deed tax, based on the actual value of the property conveyed, is only required to be paid on one deed, where the consideration was the same in each of the deeds. Biennial Report of the Attorney General,

1928-30, page 268; See also Biennial Report of the Attorney General, 1924-1926, page 50.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 29, 1934

Hon. George W. Andrews, Jr.,
Circuit Solicitor,
Union Springs, Alabama.

Pensions — Dropping and restoring party from and to pension roll.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 27, 1934 in which you state that a certain party was dropped from the pension roll of Alabama upon the recommendation of the grand jury of Barbour County under the authority of Section 2967, Code of Alabama, 1923.

You request my opinion as to the proper method of procedure to restore said party to the pension roll.

I am of the opinion that the proper method is to proceed through the grand jury, but not necessarily the same grand jury that recommended dropping the pensioner from the pension roll. Said grand jury, after proper investigation, may recommend through the Judge of Probate to the Pension Commission that the party in question be restored to the pension roll in the same manner as his name was withdrawn from said roll under Section 2967, Code of Alabama, 1923, if they so desire. Although said section gives no direct authority for restoration of the pensioner to the pension roll, yet there is such authority by necessary implication. The grand jury, sitting as a judicial tribunal in such cases, may, if they see fit, review their own decisions. This has been the administrative construction of said section since its enactment.

Section 2965, Code of Alabama, 1923, in my opinion, has no bearing on cases where the grand jury recommended that a pensioner be dropped from the pension roll. Said Section has application only where the name of the pensioner was dropped through any error, omission, or inadvertence. In such instances the Probate Judge has authority to act in the premises.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 29, 1934

Hon. D. B. Borden,
Chairman of the Court of County Commissioners,
Greensboro, Alabama.

County's power to aid in the development of agriculture.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 15, 1934, in which you request my opinion as follows:

"I am writing to inquire if Hale County can legally pay for medicine or spray with which to fight the new pest recently coming into the county known as the screw worm.

"It appears that the need for this medicine is general, and is used for the people of the county as a whole in fighting the screw worm, and demand for the same is growing rapidly.

It is my opinion that your County could pay for this medicine or spray under Section 6755, Code of Alabama, 1923, subsection 23, which is as follows:

"23. To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

December 29, 1934

Hon. L. H. Reynolds,
Judge of Probate, Chilton County,
Clanton, Alabama.

Courts of County Commissioners — May legally appropriate money for the purpose of paying to the city of Clanton money heretofore expended by said city for the purpose of paving the streets and sidewalks around and abutting the block or lot occupied by the building belonging to the county.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of December 15, 1934 wherein you state that on December 1, 1925 the Town of Clanton paved certain streets of the town including the streets around and adjoining the courthouse property of Chilton County. You further state that at that time no agreement was had between the Probate Court or the Court of County Commissioners regarding the paving of the streets around said county property, the cost of which amounted to approximately \$2,587.32. You also state that the claim was filed within one year of the date of the paving but that said claim has never been paid.

You desire an opinion of this office as to whether or not the Court of County Commissioners can legally refund the City the moneys expended by the City in paving the streets around and adjoining the courthouse property of Chilton County. You also ask whether or not they can legally pay interest on said funds.

I am of the opinion that your inquiry should be answered in the affirmative as Act No. 428, H. B. 809, General Acts 1931, page 520, approved June 20, 1931, specifically provides for just such a situation.

Sections 1 and 3 of said Act are hereafter set out:

Section 1. Courts of County Commissioners and Boards of Revenue of the several counties are hereby authorized and empowered to appropriate county funds not otherwise appropriated or set apart by law toward a partial payment of the cost of public improvements made by a city or town of the sidewalks and streets around the lot or block occupied by any building belonging to the county, whether such improvements have been heretofore made or are hereafter made.

Section 3. In cases where public improvements have been heretofore made around the block or lot occupied by buildings owned by the county no appropriation made under the authority of this Act shall exceed the cost of such improvements plus interest at the rate of six per cent per annum from the completion of such improvement.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 29, 1934

Hon. William T. Black,
Director, Transportation Bureau,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of subdivision (d) on page 179 of the Alabama Motor Carrier Act of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of September 17, 1934, has been received. Your letter follows:

"We desire an official opinion from you upon the following question:

"A corporation, organized under the laws of the State of Ohio, is employed by an automobile manufacturer to deliver motor trucks to its branch offices in Alabama and in other states. The functions of this corporation in delivering the products of the automobile manufacturer are, briefly stated, to employ drivers for the purpose of driving the assembled trucks to the branch offices and to assume responsibility for damage to the trucks while they are en route to the branch offices. This corporation carries insurance to cover damage to the trucks while they are in its custody and the automobile manufacturer is named in the insurance policy as the beneficiary. This corporation owns no vehicles. The method adopted in getting the trucks to the branch office is to let one truck travel under its own power and to place the front end of a second truck upon the rear end of the first truck, thus carrying two vehicles with one under its own power and the other trailing. Both trucks are the property, throughout the entire transaction of the automobile manufacturer, but the corporation is responsible for any damage to them resulting from its handling. The corporation is compensated for its service on the basis of the number of vehicles delivered.

"In your opinion is the corporation delivering motor trucks in the manner heretofore described subject to the Alabama Motor Carrier Act of 1931 or to an Act of the Legislature of Alabama approved October 28, 1932, (H. B. 113), when traveling through the State of Alabama.

"Inasmuch as this corporation is desirous of entering the State of Alabama in the very near future, it is requested that you give this matter your prompt consideration. It is our understanding that the Highway Department is interested in this question also as it desires to instruct its officers in line with your response hereto."

I have examined carefully the facts set out in your letter of September 17th, in the light of the provisions of the Alabama Motor Carrier Act of 1932. We have also discussed this matter with one of the highway patrol men, Mr. McClellan.

After applying the provisions of the Alabama Motor Carrier Act of 1932, to the facts set out in your letter of September 17th, it is my judgment that the operations of corporation mentioned in your letter falls clearly within the provisions of the Alabama Motor Carrier Act of 1932, in this: The corporation mentioned in your letter is such a contract carrier as is described in sub-division (d) on page 179 of the Alabama Motor Carrier Act of 1932. The Ohio corporation must qualify as a contract carrier under the Alabama Motor Carrier Act of 1932. It is my opinion that this corporation falls squarely under

the influence of this Act, and that this corporation is such a contract carrier as is described in the said Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 2, 1935

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of Alabama Motor Carrier Act of 1931 (General Acts of Alabama, Regular Session, 1931, p. 303).

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of October 6, 1933, as follows:

"It is provided in the fourth paragraph of Section 5, of the Alabama Motor Carrier Act of 1931 (General Acts of Alabama, Regular Session, 1931, p. 303) that 'any motor transportation company failing in whole or in part to pay the mileage tax or part thereof due by it within any of the time herein prescribed for the payment of the same shall be in default and shall be liable to a penalty of twenty-five per cent of the amount of the tax.'

"The first paragraph of this Section fixes the delinquent date for the payment of mileage taxes as the 15th day of the month following the end of each calendar quarter of the year.

"We desire to make the following inquiries:

"1. Whether or not the duty devolves upon the Commission to collect this penalty;

"2. If so, whether this duty is mandatory or subject to the exercise of a discretion;

"3. If such duty rests upon the Commission and is mandatory, whether or not the Commission may accept in any case the principal tax of a delinquent and endeavor to collect the penalty later, or must it insist upon the penalty before accepting payment of the principal tax?"

The Legislature, in prescribing a penalty for the failure of a motor transportation company to pay promptly the mileage tax due the State, fixed a standard for determining the amount of the penalty so prescribed. The penalty is, in each case, 25% of the amount of the mileage tax. In my judgment

no discretion is vested in the Commission or in the Courts as to the amount of this penalty.

Where a statute fixes a penalty and prescribes the form of remedy for its recovery such form is exclusive (25 C. J., Sec. 86, p. 1185).

The statute, in this instance, prescribes a remedy for the enforcement of this penalty when it is not voluntarily paid. This remedy is to be found in Section 45 of the Act, which reads as follows:

"Section 45. Any penalty or forfeiture imposed, declared or implied under the provisions of this Act may be enforced by a civil action at the suit of the State, and the Commission may institute and prosecute, or cause to be instituted and prosecuted, such action for the enforcement of such penalties or forfeitures to the State."

It is made the duty of the Commission by this statutory provision to collect, or cause to be collected, the penalty by action in the courts whenever it is not paid. Section 5 of the Act makes it the duty of the Commission to collect the mileage taxes due the State by motor transportation companies. I presume the Commission is in position, to determine from its records when a penalty is due and how much it is.

There are some defenses to a statutory penalty (25 C. J., Section 95, p. 1187; 21 R. C. L., Sec. 32, p. 234), and such defenses may be asserted, in any instance, by a motor transportation company as against the statutory penalty, even though there might be no defense against the payment of the mileage tax itself.

I think, therefore, that in contemplation of law this penalty remains separable, at least until it is paid, from the mileage tax, and that the Commission may lawfully receive and take into account the mileage tax without the payment of any penalty that may be apparently due. The Commission would still be under the duty, however, to take the necessary legal steps to collect the penalty when it arises under the rule fixed by the statute.

Answering your questions specifically, I advise you as follows:

1. It is the duty of the Commission to collect the statutory penalty against motor transportation companies for failure to pay the mileage taxes due the State within the time prescribed by the statute.
2. There is no discretion as to the collection of this penalty vested in the Commission; but the Commission's duty will be discharged under the statute by referring, within a reasonable time, any and all cases of delinquency in the payment of this penalty to the Attorney General for such action as he deems proper under the law and the facts in each case.
3. The Commission may accept the mileage tax without the payment of the penalty, but it should inform the defaulting motor transportation company of the provision of the statute in regard to the penalty and should call

upon such transportation company in each case to pay the penalty when the records of the Commission indicate that a penalty is due.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 3, 1935

Hon. F. W. McLane,
Clerk of the Circuit Court,
Talladega, Alabama.

Only prosecutions based on an indictment are authorized to be withdrawn and filed under Section 4538, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 28th, in which you request my opinion as follows:

"Will you please render me an opinion on the following questions, and oblige. When a case is appealed from the County Court to the Circuit Court and the Presiding Judge of Circuit Court enters the following order 'Withdrawn and filed with leave to reinstate same when the end of justice requires' in these cases there is no indictment only appealed on complaint in other words, these defendants were not indicted by Grand Jury, would this be a proper charge against the Fine and Forfeiture Fund for the Clerk, Sheriff and witness fees.

"If the above is not a proper charge against the Fine and Forfeiture Fund, would the Clerk be required to issue an execution against the defendant?

"If an execution was issued against the defendants, would it then be a proper charge against the Fine and Forfeiture Fund?

"If no execution was issued against the defendants would the State Examiners have authority to change the Trial Tax and Solicitor fees to Clerk for not issuing an execution?"

In answering your first inquiry, I am of the opinion the Court is without authority to order any case or prosecution withdrawn and filed that is not based on an indictment. See Section 4548, Code of Alabama, 1923, which reads in part as follows.

" * * * the solicitor may, by leave of the court, withdraw and file the indictment, with leave to reinstate the same when the ends of justice require such reinstatement."

You will note the above section provides just what prosecutions can be withdrawn and filed. Therefore, if we are correct in the above conclusions, then the order of the court is void, being without authority or law, and if it is void, any process issued based on such a judgment or order would likewise be void and could not protect the persons attempting to execute the same.

Answering your last inquiry, I do not think the examiners would charge up the trial tax and solicitor's fees against you in such cases as you could not be required to issue execution on a void judgment or order of the Court, and the sheriff would not be required to enforce the same.

Yours very truly,

THOMAS E. KNIGHT, JR.,

Attorney General.

January 3, 1935

Hon. Howard Kirby,
Clerk of the Circuit Court,
Gadsden, Etowah County, Alabama.

Costs in criminal cases where defendants are indicted jointly and a severance is demanded.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 9, 1934 in which you request my opinion as follows:

"Would appreciate your advising this office as to costs in the following proceedings, and also what section in the Code I might find the law governing the fees:

"1. In a mandamus proceeding in which the petition was filed by the Circuit Judge and the writ issued by him to the Sheriff, I am in doubt as to whether or not this case should be docketed as any other civil case and carry the same fees.

"2. In a criminal case where there are two persons indicted jointly and when the case is called for trial, on motion of the defendants, a severance is granted, should each case carry the same costs, solicitor's fees, etc., as if they had been indicted separately?"

Answering your first inquiry, I know of no mandamus proceedings that could be filed by the Circuit Judge. I have tried to think of such a proceeding and I am unable to see how this could arise.

Answering your second inquiry, if two persons are jointly indicted for an

offense and when the case is called for trial or for the setting down of a case of severance is demanded by one of the defendants, the costs up to that time would be equally divided between the two defendants. After severance each case would take its own costs and on conviction there would be two solicitor's fees as if they had been indicted separately.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 3, 1935

Hon. William F. Black,
Assistant Director,
Transportation Bureau,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of subdivision (d) of Alabama Motor Carrier Act
of 1932.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of August 17th has been received. Your letter follows:

"Please give us an official opinion as to whether or not an operation such as the one described below would be subject to Act No. 159, General Acts of Alabama, Extra Session 1932, page 178, or Alabama Motor Carrier Act of 1931.

"An individual engaged in the operation of a public gin, by the use of his own vehicle, hauls cotton into the gin, making a charge to cover as nearly as possible the cost of hauling the cotton from the farm to the gin. This party transports no other property except cotton to be ginned, but he transports such cotton for anybody and everybody who desires to use his facilities. The party states this motor-carrier operation is merely an incident to his business as a gin operator and he does not desire to engage in the transportation business as a public employment.

"Would your opinion be different if the charge made for the transportation of the cotton from the farm to the gin included a profit for the operator?

"We have been approached with this question and would appreciate an official ruling from you as promptly as possible."

It is my judgment that the individual mentioned in your letter is such a common carrier as is described in subdivision (d) on page 179 of the Ala-

bama Motor Carrier Act of 1932. The Alabama Motor Carrier Act of 1932 (p. 178 of General Acts of Alabama, 1932) defines a contract carrier as any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public. Based on your description of the business this individual engages in it is my judgment that he must, in all things, comply with the Alabama Motor Carrier Act of 1932. A careful examination of the Act fails to disclose any exemption covering this case.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1935

Hon. L. A. Williams,
Tax Collector of Colbert County,
Tuscumbia, Alabama.

Qualification of voter as to poll tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 15th, 1934 in which you request my opinion as follows:

"Mr. Holmes was convicted of murder in February 1921 at a term of the Circuit Court of Colbert County and sentenced to the penitentiary for life.

"He was paroled in December 1931 and restored to full political rights and citizenship in the Summer of 1934.

"The last poll tax paid by Mr. Holmes was the one which matured October 1, 1920, payment having been made prior to February 1, 1921. He is still under 45 years of age.

"Will you please advise what poll tax Mr. Holmes will have to pay on October 1, 1934 to entitle him to vote?

"Will he be liable for any poll tax during the time in which his political rights were taken away?

"In order to be sure about the matter, will you please inform me the exact amount in dollars and cents this party will have to pay for poll tax between October 1, 1934 and February 1, 1935."

Mr. Holmes will have to pay all poll tax due by him from the time he became 21 years of age up to the present, and in order for him to vote in any election he must have paid all poll tax due by him on or before the first day of February of the year in which he offers to vote.

Poll tax is a fixed charge and the money collected for same goes into a special fund. It is as much a tax as is an ad valorem tax, with one exception, it is made optional with the taxpayer. And if he fails to pay the same, the penalty is that he is disqualified from voting until he has paid, according to the manner set out above.

The fact that he was confined in the penitentiary would make no difference, he would still owe this tax and would have to pay the same before he could vote.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1935

Hon. T. R. Martin,
Judge of Probate, Bullock County,
Union Springs, Alabama.

Interest which has accrued on fiduciary funds should be paid over to the owner of said funds.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 26, 1934, the pertinent parts of which are as follows:

In an examination of my accounts the question has arisen as to whether or not I as Judge of Probate am entitled to interest collected on fiduciary funds which remain in my hands under the provision of Section 10466 of the Code of 1923 where said funds are placed on savings deposit and draw interest as such. I call your special attention to Section 10466 of the Code wherein it provides that the person entitled to such funds may recover the amount to which he may be entitled without interest.

As the statute does not provide for the payment of interest to the fiduciary of such funds and as the statute does not provide that I, as Judge of Probate, am responsible to the beneficiary for the amount above or in excess of the original funds placed in my charge, it appears to me that any interest allowed on such funds by reason of the fact that I as Judge of Probate have seen fit to place the funds on savings deposit would accrue to me as Judge of Probate. I ask your formal opinion as

to whether or not such interest would accrue to me or to the fund on which it is collected.

Sections 10458, 10459, 10465 and 10466, Code of Alabama, 1923, are as follows:

10458. Every register, probate judge, sheriff, clerk, and clerk and register shall prepare a report in writing showing the amount of all fiduciary funds in the hands of such official, designating the name of the owner, the case or the circumstances under which the same was received, which statement should be verified.

10459. Fiduciary funds as used in this article shall include any sums whatsoever which have come into the hands of such officer and of which he is not the absolute and unqualified owner, including witness fees and other fees or funds to which any person is entitled, other than himself.

10465. If at any time it should appear to the court, or be made known to the court, that any balance has been in the hands of any officer for a period of five years and the same remains unclaimed, it may make an order directing the same to be paid into the treasury of said county, and a separate account shall be kept of all such payments and so designated as to identify such transaction.

10466. Any person entitled to any amount so paid into the treasury or any part thereof may within ten years after such payment into the treasury recover the amount to which he may be entitled, without interest, by obtaining an order from the court under whose order the same was paid into the treasury. Such order may be made by the Court on summary motion against the probate judge of the county after five days' notice unless the court for sufficient reasons continues the hearing to a further time.

Under the above set out provisions of law, it appears that it is the duty of an officer who has possession of funds to which he is not the absolute and unqualified owner, or to which any other person is entitled, to keep said funds for the owner thereof for a period of five years, after which time, if it remains unclaimed, a court of record may make an order directing that said moneys or funds be paid into the treasury of the county. It is provided also that a separate account shall be kept of all such payments and so designated as to identify each transaction.

It is further provided that if within ten years after the date on which said moneys were ordered to be paid into the county treasury, the owner or any person entitled thereto claims such funds, they should be paid to him without interest after he has obtained an order from the court under whose order said funds were paid into the treasury.

While Section 10466, supra, provides that such a person shall not receive interest on the money or funds to which he is entitled after the same have been paid into the county treasury, I do not think that this section can be construed to hold that if in a given case the funds to which he is entitled have earned interest by having been placed in a savings account prior to the time

they were transferred to the credit of the county that he should not be entitled thereto.

I know of no provision of law whereby the Judge of Probate is allowed any fee or compensation for services rendered in connection with fiduciary funds. Section 7255, Code of Alabama, 1923, in my opinion, sufficiently determines the question as to the right of the Probate Judge to receive the interest on such funds, said section is as follows:

"The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law."

Yours very truly,

THOMAS E. KNIGHT, JR.,

Attorney General.

January 5, 1935

Alabama Public Service Commission,
Montgomery, Alabama.

Construction of Alabama Contract-Common Carrier Motor Vehicle Act of 1932, Extra Session, page 178.

Opinion by Assistant Attorney General Carmichael.

Gentlemen:

I have your letter of September 6th reading as follows:

"Some situations have developed under the Contract-Common Carrier Motor Vehicle Act of 1932 on which the Commission desires your opinion.

"A permit was secured from a Probate Judge in the name of a partnership, the tax bond provided by the Act being also executed in the name of such partnership. Subsequently one of the partners sold his interest to another person. Does this change in the partnership automatically cancel or revoke the permit? Does it also make necessary the posting of a new surety bond to guarantee the payment of mileage tax to the State?

Your request, in the final analysis, presents two questions: First, whether or not a motor-carrier permit issued under the terms and conditions of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932 (General Acts of Alabama, Extra Session, 1932, p. 178) is assignable or transferable; secondly, whether or not the sale by a partner of his interest in a partnership to another person automatically transfers such a motor-carrier permit, or such partner's interest in it, to the vendee, or whether it works a dissolution of the partnership and thus revokes or cancels the permit by operation of law.

Whether a permit issued under the Act in question is considered as a mere license or as a franchise, it seems to be established law that it is not assignable or transferable unless the statute so authorizes.

In this country, franchises usually embrace corporations, ferries, bridges, wharves, and the like (12 R. C. L., Sec. 7, p. 101) and the franchises that are generally, although not invariably, authorized to be assigned or transferred are those involving the use of corporeal property (12 R. C. L., Sec. 45, p. 210).

It is a uniform rule also that franchises which do not immediately involve the performance of a public duty are not transferable (12 R. C. L., Sec. 42, p. 216). But, on the other hand, franchises that do involve a public duty are generally not transferable without legislative authority (12 R. C. L., Sec. 43, p. 217).

Only a relatively few cases involving the right to transfer motor-carrier permits have been considered by the courts up to this time; but it is generally held in those cases that have been decided that the statute must authorize an assignment or transfer before it can legally be made (See *Dec. Digest*, AUTOMOBILES, Key No. 105).

A license to operate an automobile on the public highways in this State has been held to be a mere privilege that is not transferable without specific legislative authority (*Foshee v. State*, 15 Ala. App. 113, 72 So. 685). This seems to be the general rule. (See *Huddy's Enc. of Auto Law*, Vol 1-2, Sec. 136).

The statute under consideration does not authorize the assignment or transfer of a motor-carrier permit and, in my judgment, it is not assignable or transferable.

As to whether the sale of an interest in a partnership by one of the partners serves to transfer such partner's interest or moiety in a motor-carrier permit issued to the partnership to the vendee, making such permit valid and effective under the changed relationships, or whether the necessary effect of such a sale is to dissolve the partnership and thus revoke or cancel the permit is another matter on which few specific authorities may be found. This is no doubt due to the fact that these motor-carrier permits are of very recent origin.

However, it has been held by our Supreme Court that every change in the personnel of a partnership works a dissolution (*Warren v. Cash*, 143 Ala. 158, 39 So. 124; *Hebb v. Butler*, 192 Ala. 387, 58 So. 389). By the same authority it has been determined that a retiring partner is not released from liability to the creditors of the partnership unless the creditors agree with the new firm, or its members, for such release (*First National Bank v. Cheney*, 114 Ala. 536, 21 So. 1038). If the partnership to which a permit has been issued be dissolved, then the permit must necessarily cease to be operative, because it is not usable by any other person, firm or corporation and could not be again used without being legally assigned or transferred.

A permit may become inoperative or unusable, however, without actually being revoked or cancelled. Unless the statute should specifically pro-

vide otherwise, which it does not in this instance, permanent revocation or cancellation of a permit, in my judgment, would have to be accomplished by affirmative action.

I am of the opinion, therefore, that while a sale by one partner of his interest in a partnership to another person would not automatically revoke or cancel a motor-carrier permit issued to such partnership under the terms of the Alabama Contract-Common Carrier Motor Vehicle Act of 1932, it would render such permit inoperative and would justify the commission, upon proper proof after due notice and a hearing, in revoking or cancelling the permit by its own order in accordance with the provisions of Section 27 of the Act.

Such a change in a partnership would not release the partner who sells his interest, nor any of the other partners, from liability to the State under a motor-carrier surety bond existing at the time of the sale.

The foregoing construction involves only the Act approved October 28, 1932, and should not be confused with constructions of the Alabama Motor Carrier Act of 1931 (General Acts of Alabama, Regular Session, 1931, p. 303) which does authorize, upon approval by the Commission, the sale, assignment and transfer of certificates of public convenience and necessity issued to the class of motor carriers covered by said Act.

Yours very truly,

THOMAS E. KNIGHT, JR.,

Attorney General.

January 25, 1935

Hon. D. B. Borden,
Probate Judge of Hale County,
Greensboro, Alabama.

Premium on Bond of Probate Clerk cannot legally be paid by county where bond is payable to Probate Judge.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of January 10, 1935 wherein you request an opinion of this office as to whether or not Hale County can legally pay the premium on the bond of the Probate Clerk.

I am of the opinion that if the bond about which you inquire is that referred to or dealt with in Section 9593, Code of Alabama, 1923, that the County cannot legally pay the premium on the bond as the bond is not made payable to the County or the State of Alabama but to you as Judge of Probate. Said Section is as follows:

"9593. Oath and bond of chief clerk. — Such chief clerk, before he enters upon his duties, must take the oath directed to be taken by the officers of this state, and give bond with surety, payable to the judge of probate, in such sum as he may prescribe, upon which bond such Clerk shall be liable to such judge in consequence of any act of misfeasance of malfeasance or such chief clerk in the duties of his office; which bond must be approved by the judge of probate, and filed and recorded in the office of the clerk of the circuit court of the county."

However, if under Act No. 191, House Bill 344, General Acts of 1933, page 203, the Commissioners Court of your county should determine that it is to the interests of the county that the clerk of your office be made to execute a bond in favor of the State of Alabama a premium on that bond can be legally paid by the county.

I call your attention specifically to Sections 18 and 20 of the above mentioned 1933 Acts, which sections are as follows:

"Section 18. That when in the judgment of the Court of County Commissioners, Board of Revenue or like governing body of any county it is considered necessary to the protection of the public interests, such governing body may require any county employee or any clerk, deputy or employee in any county office to give bond in such amount and with such surety as may be approved by said governing body, unless such bond is already provided for in this act."

"Section 20. The premiums on all bonds provided for in this Act, when made by surety companies, shall be paid by the respective counties out of the general funds of said county, except that the premiums on the bonds of Superintendent of Education and County Treasurer of public school funds shall be paid by the Board of Education of said County out of the three mill school tax and the premiums on all bonds of \$1000.00 or less shall be paid by the officer making said bond."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

Hon. E. J. Ladd,
County Surveyor,
DeKalb County,
Fort Payne, Ala.

January 26, 1935

Surveys — Division of a section must be based on the original corners and boundaries of the United States Geological Surveys.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 14, 1935, in which you request my opinion on the following:

"1. Is it lawful, in the State of Alabama, to subdivide a section of land without first locating the original corners and surveying the boundaries of the section?

"2. In subdividing a section into quarter sections should the lines be run from the half-mile corners established by the government, where the original corner can be found or recovered, or should they run from corners established equidistant between the section corners?

"3. Should sections bordering on the North or West boundaries of townships be subdivided equally or subdivided according to government regulations, which throws overage or underage into the last half mile bordering on the township or range lines?"

In answer to your first inquiry, I am of the opinion that in subdividing a section the survey must be based on the original corners and boundaries as established by the United States Geological Surveys.

All disputes as to boundaries of land are to be governed by United States surveys, unless there is some statute to the contrary. — *Taylor vs. Fomby*, 116 Ala. 621, 22 So. 910. If boundaries are based on the United States surveys, it naturally follows that the subdivision lines of a section should be based on the original boundaries and corners established by the original surveys.

In answer to your second and third inquiries, I am of the opinion that the half-mile corners should be established equidistant between the section corners.

The United States surveys do not officially establish half-mile section corners, but said corners ought to be placed equidistant from a section corner. — *Nolen vs. Palmer*, 24 Ala. 391.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

January 28, 1935

Hon. J. W. Brock,
Circuit Clerk,
Enterprise, Coffee County, Ala.

Solicitor's fee — How determined.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 15, 1935, in which you request by opinion as follows:

"Section 3485 of the Code of 1923 carries a \$30.00, being Solicitor's fee. One account of Section 3485 and 3487, similar, both offense always being charged jointly in each indictment, I have charged a \$30.00 Solicitor's fee.

"My attention has been called to the fact that Section 3487 only carries a \$10.00 Solicitor's fee where the proof shows that only Section 3487 was violated, and that the proof must show that Section 3485 was violated to carry a \$30.00 Solicitor's fee.

"Where both offenses are charged in the complaint or indictment if the proof shows that Section 3485 was violated should I charge the \$30.00 Solicitor's fee and if the proof shows that Section 3487 was violated should I charge the \$10.00 Solicitor's fee?"

What the evidence or proof may show could have nothing to do with the fixing of the amount of solicitor's fee, but this is fixed or governed by the verdict of the jury. You must look to the offense charged and the statute creating the offense, and if the offense charged comes under a certain statute or section of the Code and the defendant is convicted for violating it, in that event turn to Section 3738, Code of Alabama, 1923, under the heading of Fees and Commissions of Solicitors, and follow it. The sections of the Code are scheduled here governing each offense, and you can easily determine just what solicitor's fee you should charge. This pertains to all convictions.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 30, 1935

Hon. Howell Turner,
Secretary of State,
Capitol.

Fees provided for in Section 7155 should be paid to Judge of Probate for use of State.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of January 23, 1935, which is as follows:

"We have received a letter from Hon. D. B. Borden, Judge of Probate of Hale County, Greensboro, Alabama, requesting information relative to articles of incorporation being filed under Article 20 of Chapter 274 of the Code of Alabama of 1923.

"You will note that Article 20, Section 7154 thereof, reads:

'For examining and filing corporation papers under provisions of this article the probate judge in whose office the same is filed shall receive a fee of two dollars and be paid fifteen cents per hundred words for recording the same; the secretary of state for the use of the State shall be paid five dollars for filing certificates of incorporation forwarded by probate judge as provided by law.'

"and that Section 7155 reads:

'For filing articles of incorporation, an association organized hereunder shall pay ten dollars; and for filing an amendment to the articles, two and one-half dollars.'

"Judge Borden desires to know who should collect this fee. Since the office of the Secretary of State is, more or less, concerned with the matter, will you please advise me who should collect this fee or to whom it should be paid."

I am of the opinion that the fee as prescribed in Section 7155, supra, should be paid to the Probate Judge for the use of the State. The fees provided for in Section 7154 are for the same services as required in Section 6968 and 6975, Code of Alabama, 1923, which sections deal with corporations filed under the general corporation laws. It is my opinion that Section 7155, supra, is in the nature of a flat charter fee as distinguished from the charter fee as prescribed in Section 6969, and that as such it should be paid to the Probate Judge for the use of the State.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 30, 1935

Hon. S. W. H. Williams,
County Solicitor,
Greensboro, Alabama.

Notary Public Ex-Officio Justice of the Peace — Term of office expires concurrently with term of Governor who appointed him.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of January 19th, 1935, where-

in you state that Mr. Charles E. Waller was in July of 1934 appointed by Governor Miller Notary Public Ex-Officio Justice of the Peace for Precinct 4 of Hale County.

You ask an opinion of this office as to Mr. Waller's status under the aforementioned appointment.

I am of the opinion that his term of office expired on January 14, 1935. I refer you to Section 9251, Code of Alabama, 1923, which is as follows:

"9251. Appointment and term of office. — The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, as defined by law, shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is appointed; and shall hold office for the term of four years from the first Monday after the second Tuesday in January, 1911, and every four years thereafter."

I also call your attention to an opinion in the Biennial Report of the Attorney General, 1928-30, page 133, wherein the identical question is dealt with.

The Court of Appeals in the case of Williams v. State, 125 So. 690 said:

"Courts of Appeals under Code of 1923, Section 9251, providing that term of office of all notaries public expire automatically with that of the Governor appointing them, judicially knows that term of one who was appointed notary public on June 14, 1924, expired on first Monday after Second Tuesday in January, 1927."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 30, 1935

Hon. Raymond N. Thomason,
Chairman, County Board of Education,
Jefferson County,
Birmingham, Alabama.

Schools — Payment of teacher for the time lost on account of illness is a matter within the discretion of the County Board of Education.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 14th, 1935, in which you request my opinion as to whether or not the County Board of Education has a right to pay a teacher for the time lost from work on account of being injured while performing services within the scope of her duties.

The matter of your inquiry is one of administration to be determined by the County Board of Education. Section 176, School Code of 1927, specifically provides how matters of this nature should be handled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 30, 1935

Hon. L. H. Reynolds,
Judge of Probate,
Clanton, Chilton County, Alabama.

Bonds for clerks, deputies and employees of the county may be required by the commissioners courts or boards of revenue of the various counties. However, this is discretionary with such courts. If the bonds are made in a surety company and are for more than \$1,000.00, premium must be paid by county, otherwise by individual or officer, clerk or deputy making said bond. For the county to be liable for the premium on said bond, the bond must be made to the county and State or to the county.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 7, 1934, in which you request my opinion as follows:

"Please examine Sections No. 18 and 20 of the Acts of 1933, page 203 and advise me as follows:

"1st. Whether or not the Court of County Commissioners will be authorized to require a deputy sheriff to execute a bond and the Court of County Commissioners will be authorized to pay the premium on such bond.

"2nd. Whether or not the Court of County Commissioners will be authorized to require Clerks of the Probate office to execute bonds, the premiums thereon to be paid by the court of County Commissioners."

The Act approved April 20, 1933 (General Acts, 1933, p. 203) is very broad in its provisions, especially is this true as to Sections 16 and 20, which you refer to. These sections are as follows:

"Section 18. That when in the judgment of the Court of County

Commissioners, Boards of Revenue or like governing body of any county it is considered necessary to the protection of the public interests, such governing body may require any county employee or any clerk, deputy or employee in any county office to give bond in such account and with such surety as may be approved by said governing body, unless such bond is already provided for in this act.

"Section 20. The premiums on all bonds provided for in this Act, when made by surety companies, shall be paid by the respective counties out of the general funds of said county, except that the premiums on the bonds of Superintendent of Education and of County Treasurer of public school funds shall be paid by the Board of Education of said County out of the three mill school tax and the premiums on all bonds of \$1,000.00 or less shall be paid by the officer making such bond.

These sections leave the question of requiring clerks, employees, etc., of the county to make bond discretionary with the commissioners courts or boards of revenue of like jurisdiction, and if the bond is required to be made in a surety company, the premium for such bond must be paid by the county if the bond is over \$1,000.00. If, however, the bond is for \$1,000.00 or less, then in this event, it must be paid by the officer making such bond.

Of course, this opinion is not holding that where an employee, clerk, deputy, etc., makes bond to his superior for his protections as in the case of chief clerk in the probate office under Section 9593, Code of Alabama, 1923, that the county must pay the premium on such, but for the bond to come under the provisions of Sections 18 and 20, supra, it must be required to be made to the State and county or to the county before such premium can be paid by the county. In other words, bonds to individuals for their protection do not come under the provisions of the sections quoted above.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 31, 1935

Hon. W. C. Batson,
Probate Judge,
Chambers County,
LaFayette, Alabama.

Movie Houses not liable for Bill Poster's license because of advertisement displayed on their screens.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of December 15th, 1934, which is as follows:

"The license inspector has cited the various picture show houses in our county for Bill Poster license, for the advertisement displayed on their screens. Please advise me if they are due this license."

I am of the opinion that your question should be answered in the negative. Schedule 21, Section 334, Revenue Laws, 1929, is as follows:

"All advertisement companies displaying advertisement in public places, including street cars, and each person engaged in the business of bill posting: In cities and towns of one hundred thousand inhabitants and over, one hundred dollars; in cities and towns of less than one hundred thousand inhabitants and not less than thirty-five thousand, fifty dollars; in cities and towns of less than thirty-five thousand inhabitants and not less than seven thousand inhabitants, twenty-five dollars; in all other places, ten dollars. The payment of the license required by this schedule shall authorize the doing of business only in the town, city or county where paid. Provided that any person may secure a license to do such business in any and all counties in the State upon the payment of five hundred dollars, but such person paying five hundred dollars shall not be required to pay any license to any county. This license shall not authorize the use of any private property without the consent of the owner."

It certainly cannot be said that movie houses or picture shows are advertisement companies within the purview of the above quoted section and in my opinion they are not bill posters.

Webster's Dictionary defines "Bill Poster" as one whose occupation is to post hand bills or posters in public places. It is said to be synonymous with "Bill Sticker".

The word "Post" when used in this connection seems to have originated by the custom or usage of sticking or affixing by means of metal clamps or nails, hand bills, to "posts" (meaning pieces of wood or metal). To my mind "Bill Poster" as used in the above quoted provision was intended to include only those persons who were engaged in the business of displaying placards, bills, etc., in public places on structures more or less permanent.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 31, 1935

Hon. J. F. Smith,
Clerk of Circuit Court,
Escambia County,
Brewton, Alabama.

Trial Tax — Chargeable in cases where suit is filled but withdrawn before service is perfected.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 25th, 1935, in which you request my opinion as to whether trial tax is chargeable in a case where suit is filed in the office of the Clerk of Circuit Court or Register and the plaintiff withdraws said suit before any service is made by the sheriff.

I am of the opinion that your inquiry should be answered in the affirmative. When a suit is filed it should be immediately placed on the docket. Trial tax is chargeable for each case that goes on the docket under Acts of 1919, page 282, Section 4½, as amended by Act of 1931, page 604. — **Biennial Report of Attorney General, 1930-32, page 263; Opinions of the Attorney General, Book 16, page 78 (Office Edition).** The premises considered, it is my opinion that the trial tax is chargeable in cases where a suit is filed but same is withdrawn before service is perfected.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 2, 1935

Hon. G. C. Blanton,
Commissioner, Dallas County,
Selma, Alabama.

Commissioners' Court — May legally appropriate money for hospitalization of the sick and wounded who are unable to defray their own expenses.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter in which you request an opinion of this office on the following matters:

"1. Is it permissible under the law of Alabama for the State Director of Relief, to request a Court of County Commissioners to make an appropriation from its general fund, to the local County Relief organization, and, to be expended by the proper official of the County Relief Administration for hospitalization of relief workers injured while working on relief projects.

"2. Is it, in your opinion, permissible under the law of Alabama, for the Court of County Commissioners of Dallas County, to make such an appropriation."

It is my opinion that both of your questions should be answered in the affirmative. I refer you to an Act approved November 9, 1932, General Acts 1932, page 335, which is as follows:

"That Section 1201 of the Code of 1923 be and the same is hereby amended so as to read as follows: Section 1201 (735). APPROPRIATION FOR SICK AND WOUNDED AUTHORIZED. — The Board of Revenue or Court of County Commissioners of any County in this State may make an appropriation or appropriations out of their respective county treasury to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained in their respective counties exclusively for the care of the sick and wounded."

The above quoted provision is specific authority for the right of the Board of Revenue or Court of County Commissioners to make such an appropriation as mentioned by you in your letter. The method by which such an appropriation should be handled addresses itself to the sound discretion of the county governing body.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 4, 1935

Hon. Cecil H. Strawbridge,
County Solicitor, Lamar County,
Vernon, Alabama.

In misdemeanor cases where the defendant is sought to be arrested on warrant from another state, the sheriff receiving these papers should request that extradition be granted by the Governor of Alabama before making arrest.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 23, 1935, in which you request my opinion as follows:

"I will appreciate your opinion on the proposition as to whether a Sheriff in Alabama has the right to make an arrest in Alabama, for a misdemeanor happening in Mississippi, it being a warrant issued in Mississippi."

The Governor of the State of Alabama is slow to grant request for the extradition of persons from the State of Alabama to another state where the defendant is charged with misdemeanor. This being true the safe practice for the sheriff would be to require the granting of a request for extradition

by the Governor of this State and in this event the sheriff would be fully protected, and in most cases save the State and the sheriff the expenses incident to the arrest and confinement.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 4, 1935

Hon. H. E. Williams,
County Superintendent of Education,
Florence, Lauderdale County, Alabama.

Boards of Education are without authority of law to employ any member of such Board to do any work or perform any duties or do any service which come under the jurisdiction of said Board.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 3, 1935, in which you request my opinion as follows:

"Is it legal for the County Board of Education to employ its chairman, who is a dentist by profession, to make sanitary inspection of the schools and pay him out of the school funds?"

Section 87, p. 44, School Code of Alabama, provides as follows:

"87. Members of County Board of Education. — The County Board of Education shall be composed of five members, who shall be elected by the qualified electors of the county. They shall be persons of good moral character, with at least a fair elementary education, of good standing in their respective communities, and known for their honesty, business ability, public spirit and interest in the good of public education. No member of the County Board of Education shall be an employee of said Board."

You will note the latter clause of this section says, "No member of the County Board of Education shall be an employee of said Board." Therefore, I hold that the Board of Education was without authority of law to employ any member of said Board as sanitary inspector or to employ any member of said Board any other place which is under the supervision of said Board.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 5, 1935

Hon. Robert D. Jordan,
Assistant Engineer,
State Highway Department,
Capitol.

Under contract for removal of surplus earth in road building project, contractor entitled to proceeds received from sale of iron ore contained in said surplus earth.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of recent date which is as follows:

"This department has a contract with Mitchell Brothers Construction Co., Birmingham, Ala., for the construction of a road project between Birmingham and Homewood known as W. R. H. and N. R. M. 18 — Jefferson County. This work consists principally of grading and paving State road.

"There was on this road a deep cut which the plans provided for widening and deepening. There was in evidence in the side of this original cut what appears to be a ledge of iron ore. The plans provided for wasting about 12,000 cubic yards of roadway excavation material at this place. By wasting such material, we mean that this amount of the roadway excavation material is not needed in the construction of the road and is to be deposited at some point outside of the roadway in amount and place that will not be unsightly on the road.

"We attach hereto copy of the contract form, special provisions together with extract of that part of the general specifications applying to roadway and drainage excavation, namely Section 15.01, which defines roadway and drainage excavation. The material in question comes under this class. Also Section 21 which provides for the disposal of surplus material. Also Section 4.07 covering right in and use of materials found on the work. We also attach copies of correspondence regarding the disposal of the proximate 12,000 cubic yards of surplus roadway excavation material at the cut referred to.

"We call attention to the fact that the plans provide for approximately 12,000 cubic yards of waste roadway excavation material. We call attention to the fact that the specifications, Section 21, provides that disposal of surplus materials shall be considered a necessary part of a work paid for as roadway excavation and that it will not be measured or paid for directly. It also provides that when material is wasted, it shall not be left in an unsightly pile but shall be so placed that it will present a neat appearance and shall not be an injury to abutting property.

"In the case of the disposal by the contractor of the above surplus

roadway excavation material, there was no place available on the state right-of-way where this material could be wasted in accordance with specifications. The contractor endeavored to obtain permission from owners of abutting property to waste this material on same. This permission he was unable to obtain. He then asked the Department to arrange a place for disposing material. He was advised that under the Department's interpretation of the specifications, the state would not go to any expense in providing for or disposing of surplus material other than the payment provided for roadway excavation.

"The contractor found that a portion of this surplus roadway excavation material consisted of merchantable iron ore and it is reported to this Department that in disposing of this surplus roadway material, he has arranged to sell a part of same, consisting of iron ore.

"It is requested that we be advised, under the terms of the contract and plans as explained above, what are the rights of the contractor, the state and the federal government in material so encountered. This is a National Recovery Road project, the work being paid for with federal funds."

The sections of the standard specifications referred to in your letter are hereafter set out.

"Section 21. DISPOSAL OF SURPLUS MATERIAL.

Section 21.01. Constitution Methods. All surplus excavated and waste material shall be used to uniformly widen embankments or flatten the slopes, or shall be deposited in such other places and for such purposes as the Engineer may direct. The contractor shall not 'borrow and waste' without written permission from the engineer. When material is to be wasted it shall not be left in an unsightly pile but shall be so placed that it shall present a neat appearance and not be an injury to abutting property. In no case shall material be deposited above the grade of the adjacent roadway unless directed in writing by the Engineer, nor shall the edge of the waste bank be nearer than ten (10) feet to the top of the cut slope.

"Section 21.02. BASIS OF PAYMENT. Under no circumstances shall payment be made for excavation beyond the established line of the roadway prism, or for borrow (when such excavation or borrow results from the method of 'borrow and waste'), nor for overhaul not actually required by the design. Disposal of surplus material shall be considered a necessary part of the work paid for as Roadway and Drainage Excavation. Excavation for Bridges, Excavation for Culverts and Retaining Walls, or Borrow. It will not be measured or paid for directly."

"Section 4.07. RIGHT IN AND USE OF MATERIALS FOUND ON THE WORK. The Contractor, with the approval of the Highway Director, may use in the proposed construction such stone, gravel, sand, or other material suitable in the opinion of the Highway Director, as may be found in the 'Excavation' and will be paid for the excavation of such materials at the corresponding contract unit price for 'Excavation', but

he shall replace, at his own expense, with other suitable material all of that part of the material so removed and used as was contemplated for use in the embankments, backfills, approaches, or otherwise. No charge for materials used will be made against the Contractor except the replacement herein provided for. The contractor shall not excavate or remove any material from within the Right of Way which is not within the excavation limits, as indicated by the slope and grade lines, without written authorization from the Highway Director."

"Section 15.01. — ROADWAY AND DRAINAGE EXCAVATION.

Roadway and drainage excavation shall consist of the removal and satisfactory disposal of all material of whatever nature taken from the limits of the work including such excavation as is necessary for inlet or outlet ditches, lateral drainage ditches, changing or clearing waterway channels and stripping material pits; and shall include all excavation (except Borrow that is bid as a separate item in the proposal), shaping and sloping necessary for the preparation, construction, and completion of the roadbed, embankments, subgrades, shoulders, slopes, side ditches, take-off ditches, intersections, approaches and private entrances, all as directed to the required alignment, grade, and typical cross sections shown on the plans; it shall also include the removal and satisfactory disposal of all surplus and unsuitable materials encountered in the roadway, the replacement of any such unsuitable material with satisfactory material; and the breaking up of all gravel, chert, macadam or other surfacing material that may be in place on the old roadway and the satisfactory disposal as hereinafter specified."

From your letter it definitely appears that the State of Alabama lost any interest which it had in the surplus earth which had to be moved in order that the highway in question might be widened. It appears that the contractor even went to the extent of soliciting assistance from the State in removing said surplus earth, which assistance was denied him on the ground that under the existing contract it was his duty to dispose of same.

In view of these facts I am of the opinion that the excavated materials belong to the contractor.

I refer you to the case of Long Island Contracting and Supply Co. v. City of New York, 97 N. Y. 483, from which I quote:

"The main question presented for decision is, to whom, according to these provisions, would the surplus earth, including top soil, belong after it was excavated and ready for removal? Assuming, without deciding, that the old material mentioned in clause 4 does not include the excavation of virgin soil, there was no express provision that the surplus earth should belong to the contractor, but even on this assumption, the requirement that the contractor should remove the surplus earth, with no reservation of title by the city, no stipulation that it should be removed to a specified place and no direction as to what should be done with it, except simply to remove it from the line of work, implies that the contractor could do what he wished with it. He was bound to get rid of it and this was an abandonment or transfer by the city of its right thereto. It was part of his compensation for doing the work of excavation. The city had acquired the land on which the street was to be constructed,

and it is not claimed that the surplus earth belonged to the former owner of the fee. The duty to excavate and remove it, without any reservation or condition, made it the property of the contractor as soon at least as it was loaded upon carts or other vehicles for the purpose of removal. In this respect the contract is not unlike one to tear down a house and remove the materials. If nothing is said as to what is to be done with them after they are removed, by necessary assumption they belong to the contractor. * * * Accordingly we hold that according to the contract the top soil belonged to the contractor as fast as it was excavated and loaded for removal."

I also refer you to the case of *Welch v. McNeill*, 101 N. Y. 985.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 5, 1935

Hon. W. O. Brownfield,
Register, Lee County,
Opelika, Alabama.

Moneys in the hands of the circuit clerk which are required to be transmitted to the State, are subject to five per cent commission to be retained by the clerk under Act approved July 28, 1931.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your favor of January 5, 1935, which comes to me as the successor of Hon. Thomas E. Knight, Jr. Your letter contains the following request for an opinion:

"I will thank you for your construction of the Act of the Legislature approved July 28, 1931, page 669, General Acts 'To provide for the compensation of Clerks and Registers of the several Circuit Courts of this state for the collection and remittance of any sum or sums by such Clerk or Register for the State of Alabama'.

"I have on hand a certain sum of money being the proceeds of the sale of an automobile which was seized by the sheriff under the Prohibition Laws of Alabama for illegal transportation of whiskey. This automobile was on the trial of the case adjudged contraband and forfeited to the State and a decree of sale of the car was made.

"After paying the court costs, expenses, sale, etc., and then paying to the sheriff who seized the car one fourth of the remainder, there still remains on hand the balance, to be remitted to the State Treasurer for the Law Enforcement Fund.

"The question is: Am I not entitled to the five per cent commission on the remainder after paying the costs and the sheriff's seizure fee? The money was collected for the State clearly although it was collected by the means of confiscation and sale of the property."

It is my opinion you are entitled to five per cent commission for collecting and transmitting this money to the State Treasurer. I call your attention to an Act of the Legislature approved July 28, 1931 (General Acts 1931, p. 669) which is as follows:

"That the Clerks and Registers of the several Circuit Courts of the State of Alabama shall receive five per cent of any sum or sums collected by such Clerk or Register for the State of Alabama, as compensation for the collections and remittance of the same, the said percentage to be deducted by such clerk or Register making the collection from such sum or sums collected."

I think there is no question but that the money you have in hand is covered by the above quoted Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 5, 1935

Hon. O. F. Lightner,
Sheriff, Coffee County,
Elba, Alabama.

Execution — End of Term at which execution issued does not invalidate execution when same issued within ninety days prior to the last day of the term.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of recent date wherein you request an opinion of this office on the following matters:

1. Does an execution expire with the term of the court from which it is issued?
2. Can an execution issued from the Circuit Court, on December 15, 1934, be levied after the last Saturday before Christmas, 1934?

3. Can an execution be levied after the expiration of the term of court during which it is issued and return thereafter made, provided such levy and return are made within ninety days after the issuances of the execution?

4. Should I, notwithstanding the fact that ninety days have not elapsed since their issue, return on the last day of the term of court all executions under which I have made no levies?

5. Should I return all unsatisfied executions in my hand from the Circuit Court at the expiration of the term of such court and request new executions at the beginning of the succeeding term?

Sections 7813 and 7814 are applicable to the questions at hand and are as follows:

"Section 7813. He must execute the writ with diligence, and if practicable, perform the mandate thereof, and make return of his acts to the clerk or register as soon as practicable and not later than ninety days from the date of the execution."

"Section 7814. The return term of the writ is the term of its date unless issued less than ninety days before the beginning of the next term, in which case it may be returned during the term of its date, or the term next after its date, or in vacation; but must be returned within ninety days from the date of its issuance."

As I construe the two sections quoted above, executions must be returned within ninety days from the date of the execution in any event. Consequently an execution expires with the term of the court from which it was issued where the date of the execution is more than ninety days prior to the last day of the term. In this sense only can your first question be answered in the affirmative.

In answer to your second question, I am of the opinion that Section 7814, supra, specifically answers your question in the affirmative.

The same section requires an affirmative answer to your third inquiry.

In answering your fourth question, it is my opinion that you should return all executions on which you have made no levy when said executions were issued within ninety days immediately preceding the last day of the term.

In answer to your fifth question, it is my opinion that you should not return all unsatisfied executions in your possession at the end of the term unless they were issued more than ninety days prior to the last day of the term.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

February 5, 1935

Hon. Price Williams,
Judge of Probate,
Mobile, Alabama.

"Calendar Year" as used in contract means year from January 1st to December 31st inclusive.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 18th in which you state:

"I wish to obtain a ruling from you on the following proposition:

"Mr. Gessner T. McCorvey of this city was appointed State Land Agent for Mobile County on February 16th, 1931, by Honorable John Brandon, then State Auditor, under the provisions of Sections 3135 to 3137, inclusive, of the Alabama Code. This appointment was approved by the Governor on February 17th, 1931, and a copy of the contract between Mr. McCorvey and Honorable John Brandon, the State Auditor, was filed in my office. Mr. McCorvey has been discharging the duties of State Land Agent under the contract and when the State Auditor's Act was enacted on October 19th, 1932, (General Acts of Alabama, Extra Session, 1932, pages 99-102) relieving the Auditor of the duties and functions enumerated by the above mentioned sections of the Code, the State Auditor under Sections 3135 to 3137 of the Alabama Code, continued Mr. McCorvey as State Land Agent for this county.

"The question I wish a ruling on is as to the construction of Mr. McCorvey's contract in regard to his compensation. Under Mr. McCorvey's contract with the State Auditor his compensation was fixed at ten per cent of the proceeds arising from any sales or redemption which may take place after efforts had been made by Mr. McCorvey to bring about such sales or redemptions, but his compensation was not to exceed the gross sum of \$3,000.00 in any calendar year and after the receipt by him of \$5,000.00 in any calendar year he was to continue to render services during that year as provided in his contract without further compensation.

"Owing to heavy redemptions of lands in 1934 Mr. McCorvey reached the gross sum of \$5,000.00 in May or June of last year and since that time has received no compensation, and if we construe the calendar year as commencing January 1st, rather than February 17th, the date of the approval of Mr. McCorvey's appointment by the Governor, would he not be entitled to compensation from January 1st, 1935 to January 14th, 1935, — this being a new calendar year?

"I here quote the clause of Mr. McCorvey's contract on which I wish you to advise me:

'IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties that the Party of the Second Part (McCorvey) shall receive a contingent compensation of ten per cent of the proceeds arising from any sales or redemptions which may take place after efforts of the Party of the Second Part (McCorvey) have been made to bring about such sales or redemptions, provided the compensation paid to Second Party (McCorvey) shall not exceed the sum of Five Thousand Dollars (\$5,000.00) in any calendar year and after the Second Party (McCorvey) shall have received the sum of Five Thousand Dollars (\$5,000.00) in any calendar year, he will continue to render services during that year as herein provided without further compensation for that year, the said year to begin on the date commission is issued. Whenever the Party of the Second Part (McCorvey) makes any claim for compensation under this Contract it shall be accompanied by a certificate from the Judge of the Probate Court of the County in which the land in question lies, certifying that such sales or redemptions were brought about after efforts of the Party of the Second Part (McCorvey) had been made to bring about such sales or redemptions.'

"Trusting you can give me this opinion by the 26th of this month so that I will not be delayed in making my settlements with the various officials and governmental departments entitled to participate in the funds received from tax sale redemptions, I am."

In reply, I advise that it is my opinion that a calendar year as used in the contract means the year completed according to the Gregorian calendar, to-wit: from January 1st to December 1st inclusive.

Section 9 of the Code of Alabama says:

"The word 'month' means a calendar month and 'year' a calendar year, unless otherwise expressed. * * * "

Again it was held in *Schaffner vs. Lifinsky*, 138 S. E. 418, 194 N. C. 1, as follows:

"Ordinarily and in common acceptation calendar year means 365 days except leap year, and is composed of 12 months varying in length according to the common or Gregorian calendar."

"The words 'calendar year' in Civil Code 1910, Section 3708 means from January 1 to December 31 next thereafter inclusive." *Byrne vs. Bearden*, 107 S. E. 782, 27 Ga. App. 149.

"'Calendar year' means a year from January 1 to December 31 inclusive and not a period of twelve months commencing at any fixed or designated month and terminating with the day of the corresponding month in the next succeeding year under a law requiring a liquor license to pay a designated sum for each calendar year or part thereof. *Carroll v. Wright*, 63 S. E. 260, 131 Ga. 728.

By reference of our revenue laws, it will be observed that there has been a careful distinction between calendar year, tax year and fiscal year. The tax year applying ordinarily to ad valorem taxes extends from October 1st to September 30th inclusive. A fiscal year has the same term. In the Revenue Code though, we find the franchise tax, the permit fee, excise taxes and certain other taxes have been fixed to run according to the calendar year.

It is, therefore, my opinion that Mr. McCorvey would be entitled to any compensation due him for such portion of his term which he actually served during the calendar year 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 7, 1935

Hon. F. C. Marquis,
Right of Way Agent,
State Highway Department,
Capitol.

Highway — a public highway may be established by legal court proceedings, by dedication or by prescription.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 1st, 1935 in which you state that in 1922 the Highway Department built a road and the owner of the right of way gave his consent. He was supposed to have signed a deed. He certainly expressed his willingness for the road to be built as a number of witnesses state so. The Highway Department has been using the road for twelve or thirteen years.

You request my opinion as to whether or not the road in question is a public highway.

I am of the opinion that said road is a public highway providing there has been a dedication of same.

A public highway can only be established in Alabama by legal court proceedings, general use by the public for the prescription period of twenty years, or by a dedication by the owner of the soil. — **Mellview Cemetery Company v. McElvera**, 174 Ala. 457, 57 So. 375; **Cross v. State**, 147 Ala. 125, 41 So. 875.

It appears from the statement of facts that the road in question did not become a highway by means of court proceedings or by prescription. The

question then presents itself as to whether or not same became a public highway by dedication. This depends upon the question of fact. "Dedication" is a donation or appropriation or property to public use by the owner, accepted by the public. It may be in writing or in parol; may be evidenced by words or acts, by one declaration or unequivocal act, or by a course of conduct evincing a clear purpose to dedicate. — **Town of Leeds v. Sharp**, 218 Ala. 403, 118 So. 572; **Mill v. Houk**, 155 Ala. 448, So. 562.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

February 7, 1935

Hon. Haygood Paterson,
Sheriff of Montgomery County,
Montgomery, Alabama.

Sheriffs are required to make a report under Section 4821, Code of Alabama, 1923, of only persons charged with violating a State statute or who are charged, under the common law, by the State of an offense.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 25, 1935, in which you request my opinion as follows:

"I respectfully submit to you for an official opinion the following questions:

"Is it the duty of the Sheriff of Montgomery County, under Section 4821 of the Civil Code of Alabama, in person or by deputy to report in writing to Clerk of the Circuit Court of such county within ten days next succeeding the commitment the name of such prisoner, etc., if the prisoner is committed from some other court than the Circuit Court.

"I would like to know whether or not if it isn't the duty of the Sheriff to make such a report to the Clerk of the Circuit Court. Under such circumstances should he make a report to the Clerk of the particular court having jurisdiction of the prisoner, such as the Court of Common Pleas, Juvenile Court or Federal Court as the case may be in Montgomery besides the Circuit Court, and also what are my duties relative to the second report mentioned in this section, if the prisoner comes from some other court than the Circuit Court, should a report be made to the Clerk of the Circuit Court or Clerk of the particular court having jurisdiction of the prisoner."

I call your attention to Section 4821, Code of Alabama, 1923, which is as follows:

"4821. Sheriff to report prisoners committed and discharged. — When a prisoner is committed to the county jail, it is the duty of the sheriff of such county, in person or by deputy, to report in writing to the Clerk of the circuit court of such county, within ten days next succeeding the commitment, the name of such prisoner, the day of his entering such jail, and by what authority, and upon what charge committed; and when a prisoner is discharged from, or otherwise leaves such jail, the sheriff shall report to such clerk, within two days next succeeding, the name of such prisoner and by what authority and when he so left or was discharged."

You will note from the above quoted statute, that the clerk of the circuit court is particularly designated as the officer to whom you make these reports and does not authorize the making of such reports to anyone else. I think the statute refers to persons placed in jail charged with an offense against the State and does not include Federal prisoners, as the State could have nothing to do with their disposal except by special order of the Federal Judge.

As to your second request, what I have said above applies here. You only have to do with prisoners charged with violating a state statute or a common law offense charged by the State. No matter what court the case comes from if your defendant is charged with an offense under the State, you are required to make both reports to the clerk of the circuit court and no other.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 11, 1935

Hon. Cyrus B. Brown, President,
Board of Revenue,
Montgomery, Alabama.

County may make appropriation of County funds in aid of construction of road by the State.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 11, 1935 which is as follows:

"Mr. W. G. Henderson, Field Director, Emergency Relief Administration, has requested the Board of Revenue of Montgomery County, Alabama,

to make an appropriation from County funds to aid the State of Alabama and the Emergency Relief Administration of the United States Government in the surfacing of the road known as the Old Birmingham Highway, which is a State constructed and maintained road. The request of Mr. Henderson relates only to that part of said road lying and being in Montgomery County.

"Will you kindly advise us at your earliest possible convenience whether or not the Board of Revenue of Montgomery County, Alabama, has a legal right to appropriate County funds for the above purpose?"

I am of the opinion that your question should be answered in the affirmative.

I am herewith enclosing copies of opinions rendered by my predecessor to Hon. W. C. Haigler, President of the Board of Revenue of Lowndes County, which opinions deal with the question at length.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 13, 1935

Hon. Chas. E. McCall,
State Auditor,
Capitol.

Agriculture and Industries — Fines for violations of Article 17 (Sections 138-158) of the Agricultural Code of 1927 prior to January 31, 1935, go to Fine and Forfeiture Fund of County.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 12, 1935 in which you request my opinion as to the proper disposition of fines collected for violations of Article 17 (Sections 138-158) of the Agricultural Code of 1927.

I am of the opinion that said fines go to the Fine and Forfeiture Fund of the County prior to January 31, 1935 and thereafter to the Agricultural Fund.

Article 17, supra, deals with certain rules and regulations concerning fertilizers. Section 158, the last section in said Article, provides as follows:

"Misdemeanor. — Any person who shall violate any provision of this Article shall be guilty of a misdemeanor and upon conviction, shall be

fined not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each offense."

It will be noted that no expressed provision is made in said section for the disposition of the fines imposed for violation of the provisions of said Article. Nowhere else in the Agricultural Code is there any such special provision. Therefore, same is governed by Section 4038, Code of Alabama of 1923, which provides as follows:

"4038. Fines to go to county, and judgment accordingly. — All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particular county."

However, Section 24 of Act No. 13, House Bill 61, approved January 31, 1935, which amends Section 484 of the Agricultural Code of 1927, provides in part as follows:

"Section 24. That Section 484 of the 'Agricultural Code of Alabama', of 1927, be and the same is hereby amended so as to read as follows: Section 484. Agricultural Fund. — Wherever provision is made in this Code for the collection of any fee or license or the imposition of any fine or penalty for the violation of any provision of this Code without providing for the disposition of the proceeds derived therefrom, such proceeds shall accrue to the Agricultural Fund. * * * "

Therefore, after the adoption of this Act the fines in question accrue to the credit of the Agricultural Fund.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 18, 1935

Hon. W. W. Hill,
Judge of Probate, Montgomery County,
Montgomery, Alabama.

A person is not entitled to be registered before reaching 21 years of age.

Opinion by the Attorney General.

Dear Judge Hill:

Your letter of February 5th, 1935, has been received. Your letter follows:

"I find in the application for registration a great number of people whose applications recite: My age is 20, I was born on March 27, 1914. Likewise, another: My age is 20, I was born February 5, 1914. These people are registered in Montgomery County, but they show on their registration that they are not 21, and I am asking the question, can they be allowed to vote in the election on February 26th or in the election on March 18th?

"I am asking for an opinion so as to be able to make up a correct polling list as far as is in my power, and I would like to know if, these names can be placed on a list of qualified voters?"

In answer to your inquiry, I beg to refer you to Sections 177 and 178 of the Constitution of Alabama of 1901. Section 177 of the Constitution provides that a person must be 21 years old or upwards before he can become an elector. Section 178 of the Constitution provides that a person must be duly registered as an elector before he is entitled to vote. In my judgment, this means that only electors may be registered. To be an elector, one must be twenty-one years of age. When one has registered as an elector, the registration is decisive of the fact that he is twenty-one years of age and has the right to vote at any election held after his registration so far as age is concerned.

In this connection, I beg to refer you to the two former opinions of this office found in the Biennial Report of the Attorney General 1928-1930, pages 649 and 672.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. J. M. Gray,
Chairman, County Commission,
Jasper, Alabama.

Rubber Stamps — Stationery and legal charge against county.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 8th, 1935, which is as follows:

"Some of the new County officers, Probate Judge and the Sheriff have made requisitions for rubber stamps with their names and other printing with which to stamp various papers coming into their offices.

"Since such rubber stamps are made for the purpose of elimination of work, I feel like the officer ordering said stamp should pay for same since he gets paid for the work he should do it or pay for the labor saving stamps himself.

"Will appreciate an early answer as to whether or not such rubber stamps would be a legal claim against the County."

Section 9604, Code of Alabama, 1923, as amended by an act of the Legislature of 1927, page 693, is as follows:

"The Judge of Probate, Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or Custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expense for his seal of office, to be paid for by the county."

The above quoted provision has been construed by this office on numerous occasions with particular reference to the word "stationery". It has been held that "stationery" includes a typewriter and a photostat machine.

Biennial Report, 1928-30, Page 670.

Biennial Report, 1926-28, Page 565.

In my opinion a rubber stamp is not only a labor saving device but in many instances adds to efficiency and certainly saves valuable time, and that a purchase of same would be a legal charge against the county.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

February 19, 1935

Hon. J. F. Hitchcock,
Clerk of Circuit Court,
Bullock County,
Union Springs, Alabama.

Registers in Chancery — Entitled to commission on sale to satisfy lien although property is bought by lien holder and no cash consideration was paid.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 8, 1935 in which you state that a bill of equity was filed in the Circuit Court of your County seeking to establish a vendors lien on certain lands within the County. The lien was declared by the Court and a sale ordered to satisfy said lien. The amount of the lien was \$8,800.00. The sale was conducted and the land bought in for the amount of the lien by the lien holder. There was no money involved in the transaction from the start to finish. In fact, it was a transaction to satisfy a lien.

You request my opinion as to whether the Register is entitled to a commission for selling the land.

I am of the opinion that your inquiry should be answered in the affirmative.

The commission on sales by the Registers in Chancery is paid under Section 7283, Code of Alabama, which provides in part as follows:

"7283. Fees allowed to registers. — Registers are entitled to the following fees for the following services: . . . Commissions on sales: For the first one hundred dollars, two per cent; for all over one hundred dollars, and not exceeding one thousand dollars, one and one-half per cent; for all over one thousand dollars and not exceeding twenty thousand dollars, one per cent; and for all over twenty thousand dollars, one-fourth of one per cent. . . ."

This is computed upon the total amount of the actual consideration paid for the property, which in the instant case would be the amount of the lien. The amount of the consideration paid for the purchase of property is not merely the cash paid for the purchase of property is not merely the cash paid but the assuming of the indebtedness thereon. The assumption of the indebtedness is as much a part of the consideration paid for the purchase price of property as the actual cash payments. — **Biennial Report of Attorney General, 1930-32, Page 878.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. Homer F. Mitchell,
Judge of Probate,
Cullman County,
Cullman, Alabama.

Long term lease agreement held subject to tax levied by Section 21½ of the Revenue Act of 1927, the amount to be based on the present cash value of the long term payments.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 4th in which you state:

"Inclosed you will find a paper from Electrical Research Products Inc. Will you please pass on this paper and tell us whether it carries a tax or not, and how much tax. Please give us an early reply as this paper has not been recorded and also return the paper with this information."

The instrument which you enclose is in the form of a long term lease of certain moving picture equipment in which the Exhibitor agrees to pay the payee termed "Products" the sum of \$19 per week from December 31, 1934 until \$95.00 shall be paid and thereafter \$17.50 per week.

From a reading of the lease I do not find where the total amount to be paid is set out or the term which such lease is to run. I find pencil notation in the left-hand corner of the first page of \$988.00. I do not know the significance of this. In my opinion, the instrument is subject to the so-called deed tax, the amount to be determined by the present cash value of the long term payments. I am enclosing a copy of opinion to Hon. Fleetwood Rice, under date of February 1st, 1935, in which the case of Reiter Connally Manufacturing Company v. Hamlin as Admr., 144 Ala. 210, was cited. The case gives the method of determining present cash value of amounts to be paid over a long term period, and may be useful to you in making your calculations.

Before you can do this you will have to ascertain the term which the lease is to run.

We are returning the instrument.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. John Brandon,
State Treasurer,
Capitol.

Escheats — Disposition of check payable to deceased whose estate escheated to the State of Alabama when said check was received by the administrator after final settlement of the estate.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 12, 1935, in which you enclose a letter addressed to you which reads as follows:

"To the Honorable Treasurer of the State of Alabama.

Montgomery, Alabama.

Dear Sir:

I have a check in the sum of \$30.00, payable to William O. Danfels, now deceased, whose estate escheated to the State of Alabama in the absence of heirs. This check represents the amount of some dividends accruing on certain stock which said decedent owned prior to the sale of same by his administrators, so that it is properly part of his estate. However, the check has just recently been received by the administrator and the estate was finally settled and closed in the Probate Court of Mobile County, Alabama, March 1, 1933.

I find no authorities in the books for handling such a situation, and our probate Judge, Judge Price Williams, also knows of no way the matter can be handled. I believe that I can probably procure the company which owes this money to make its check payable to the State of Alabama, the proper owner of same.

If you will give me your written authority, preferably in duplicate so that I may furnish one copy of same to said company, authorizing said company to make its checks for \$25.00 to the State of Alabama and for \$5.00 to me, as a minimum fee for handling the matter, I shall endeavor to have the situation adjusted in this way.

Thanking you in advance for your prompt attention, I am

Yours respectfully,

(Signed) Thomas A. Hamilton.

THOMAS A. HAMILTON."

The law relative to escheats is governed by Chapter 288, (Section 7614-7622), Code of Alabama, 1923. Section 7614 provides as follows:

"7614. When property escheats. — The property of all persons who die without devising or bequeathing the same, and leaving no lawful heirs or husband or wife, capable of taking, or where the devisees or legatees are incapable of taking the same, and there are no lawful heirs, or husband or wife, escheats to the state."

Due to the fact that there has been a final settlement of the estate in question, it is my judgment that the \$30.00 in question may be disposed of in the manner suggested by Mr. Hamilton.

In my opinion you may give Mr. Hamilton your written authority authorizing said company to make its check for \$25.00 payable to the State of Alabama and for \$5.00 payable to him as a reasonable fee for handling the matter.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. H. G. Mitchell,
Sheriff of Fayette County,
Fayette, Alabama.

Chief Clerk of Probate Court. — 1. No authority to sign affidavits and warrants of arrest for County Court. 2. No authority to issue search warrants.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 13, 1935, which is as follows:

"Does the Chief Clerk in the office of the Probate Judge have the authority to sign affidavits and warrants of arrest for the County Court?"

"And does he as Chief Clerk have the authority to sign search warrants?"

I am of the opinion that your first question should be answered in the negative. I hereafter quote an opinion rendered by this office on October 6, 1920 to Hon. H. T. Roberts, Probate Judge of Barbour County, as follows:

"I beg to acknowledge receipt of your letter of October 4, in which you desire to be advised as to whether or not the bonded clerk in your office can lawfully sign a warrant of arrest of a party and sign your name thereto.

"Section 6703 of the Code provides how the warrant shall be issued and signed, and the form is given for the warrant in Section 6704.

"I am of the opinion that this is a judicial act and cannot be delegated by you to anyone."

In my opinion the Chief Clerk in the office of the Probate Judge is without authority to issue search warrants.

The Clerk of the Probate Court is a ministerial of fees only.

Sections 5471, 5474 and 5475 clearly demonstrate that the issuance of a search warrant involves discretion of a judicial nature.

Section 5471, supra, provides as follows:

"A search warrant is an order in writing in the name of the state, signed by a magistrate, directed to the sheriff, or to any constable of the county, commanding him to search for personal property, and bring it before the magistrate."

The Chief Clerk in the office of the Probate Judge is not a magistrate.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Where commissioners court makes appropriation to particular school in the county, such appropriation should be paid to the County Board of Education for the use and benefit of the particular school.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 5th, in which you state:

"Commissioners Court of Elmore County has made an appropriation to the public school at Tallassee. Please advise us the proper person to pay this money to — whether to the County Board of Education to be turned over to the school, or to the Treasurer of the school at Tallassee."

In reply I advise that I assume that the appropriation is made under authority of Act No. 602, N. B. 751 (Parker) approved August 4, 1931.

This Act is silent as to the disposition of funds.

However, Section 95 of the School Code of 1927 provides:

"95. Property Vested in County Board. — All the property, estate,

effects, money, funds, claims and donations now or hereafter vested by law in the public school authorities of any County for the benefit of the public schools of any County, hereby transferred and vested in the County Board of Education, and their successors in office. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular County, school district, or public school, shall be held in trust by the County Board of Education for the benefit of any such county school district or school."

It is, therefore, my opinion that the appropriation should be paid to the County Board of Education for the use and benefit of such public school at Tallassee.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. U. G. Jones,
Solicitor, Elmore County,
Wetumpka, Alabama.

A physician or surgeon in order to receive pay when summoned by the Coroner to make a post mortem or external examination of a person who has met death by cause unknown is entitled to \$5.00 for such examination and 10c a mile for travel. If physician or surgeon makes an autopsy or an internal examination he is entitled to \$25.00 and no mileage.

Coroner receives his compensation for services under Section 3751, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 9, 1935 in which you request my opinion as follows:

"1. Is a coroner, who acts under the provisions of the Act of the Legislature of Alabama approved September 9, 1927, pages 497, and 498, which amends Section 4559 of the 1923 Code, where no physician or surgeon is used or where no jury is summoned, but where the coroner has been informed that a person is dead in the County and that said person died without being attended or examined by a legally qualified physician, and the coroner forthwith proceeds to the place where the dead body is lying and examines the dead body to ascertain the cause of the death and reports same in the same manner as inquests are reported, entitled to compensation for his services? If so, how much?

"2. When the coroner summons a physician but no jury and performs services as above set out and files his claim with the Commissioners Court for his services how much is he entitled to?

"3. When the coroner files a claim with the Commissioners Court for his services and includes in his claim the services of a physician and attaches to the claim his certificate that the services of the physician were rendered and that the physician reported to him his finding on such examination and that he had filed such report or opinion with the Clerk of the Circuit Court as in cases of inquest, is it proper to allow the claim?"

Answering your first inquiry, I call your attention to Section 4569, Code of Alabama, 1923, as amended by an Act of the Legislature, General Acts 1927, page 497, which is as follows:

Be it enacted by the Legislature of Alabama that section 4569 of the Code of Alabama be and the same is hereby amended so as to read as follows: 4569. Compensation of Surgeons and Physicians. Any surgeon or physician who being duly summoned by the Coroner, makes a post mortem examination and gives a professional opinion thereon, is entitled to receive five dollars with an additional fee of ten cents for each mile he may be compelled to travel to make said examination, and said fee shall be paid out of the county treasury upon certificate of the Coroner, certifying that such services have been rendered; when any physician or surgeon, is summoned by the Coroner to perform an autopsy or internal examination, the physician or surgeon performing said autopsy or internal examination, shall be entitled to receive the sum of twenty-five dollars, to be paid out of the county treasury upon certificate of the Coroner that such a service has been rendered; when an autopsy or internal examination has been performed, the physician or surgeon shall not be paid the five dollars, as provided for an external post-mortem examination, but the sum of twenty-five dollars herein provided for shall be the entire amount received for such service. Provided that if the estate of the deceased is solvent the amount herein paid by the County shall be recovered from the estate of the deceased."

You note first that said physician or surgeon must be summoned by the Coroner and requested to make such examination. If the examination by the physician or surgeon is an external post mortem examination with professional opinion and without autopsy, then the physician or surgeon is entitled to a fee of \$5.00 and 10c for each mile he may be required to travel to make such examination.

Again, if an autopsy or internal examination is made, in this event the physician or surgeon is entitled to a fee of \$25.00 and this fee shall cover all the charges made by such physician or surgeon and he is not entitled to include nor can he charge an additional fee of \$5.00 for the external examination.

The physician or surgeon is not entitled to any of the fees above outlined until the proper certificate is executed by the Coroner and filed as required by Section 4569, supra, as amended.

Answering your second and third inquiries, the Coroner is not entitled to any fee under the provisions of this Section as amended, but must look to the general provisions of the law pertaining to his duties and authority, which are contained in Chapter 162, Sections 4557, to 4570, both inclusive, Code of Alabama, 1923; and then he receives his pay under Section 3751, Code of Alabama, 1923. Here the schedule of fees is set out and he receives these fees and no others unless some fee may be otherwise provided by law and I know of no other provisions.

In the case of **Haftel v. Montgomery County**, 127 Ala. 563, our Supreme Court has said along this line:

"1. Claims against county; what are chargeable. — No claims are chargeable on a county treasury, or can be paid therefrom, except such as the law imposes upon the county or empowers it to contract; and no officer of the county can charge it with the payment of other claims, however meritorious the consideration or whatever may be the benefit the county may derive and enjoy from them."

See also 196 Ala. 482; 204 Ala. 468; 209 Ala. 517.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 19, 1935

Hon. J. Pitt Williams,
Sheriff, Barbour County,
Clayton, Alabama.

Where a county has two courthouses, there is no authority of law to pay the sheriff for removing prisoners from one to the other.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 8th, 1935, in which you request my opinion as follows:

"In a county where there are two separate Courts; with jail where prisoners are kept located at the county site. Is expense incurred in transporting the prisoners to and from court in other division a legal charge against county?"

I am unable to find any law that would authorize payment for the removal of prisoners in counties where there are two courthouses, from one courthouse to the other.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 20, 1935

Hon. Henry N. Hughes,
Chairman, Democratic Executive Committee
of the City of Montgomery,
Montgomery, Alabama.

Section 3 of an act approved April 19, 1933 (General and Local Acts of 1933, p. 193) has no reference to the municipal primary which is to be held on Monday, March 18; in this primary, absentee ballots should be procured from the Probate Judge of Montgomery County, and when the ballot has been voted, it should be returned to the Chairman of the Executive Committee of the City of Montgomery; in all other respects the law governing said primary is set out in the Montgomery City Commission Act of 1931 (Acts 1931, p. 99) and in Chapter 20 of the Code of Alabama.

Opinion by the Attorney General.

Dear Mr. Hughes:

Your letter of February 5 has been received. Your letter follows:

"In view of the approaching municipal election to be held by the voters of the City of Montgomery on March 18th of this year, I, as Chairman of the Democratic executive Committee of the City of Montgomery, respectfully request your opinion as to what officer is charged with the duties of handling absentee ballots in connection with said election under provisions of an Act approved April 19, 1933, Act No. 178, General Acts 1933, page 193.

"In this connection, I would also like to know whether or not the aforementioned Act repeals these parts of an Act approved March 4, 1931, General Acts 1931, page 99 et. seq., relating to absentee ballots."

You request my opinion as to what effect, if any, an Act approved April 19, 1933 (General and Local Acts of 1933, p. 193) has upon the previously existing law governing the holding of the municipal primary to be held in the City of Montgomery on Monday, March 18, 1935.

This 1933 Act seems to be confined to the subject of absentee ballots. Previously that subject, so far as it related to primary elections in the City of Montgomery, Alabama, had been governed by Article 3 of Chapter 20 of the Code of Alabama, and by the Montgomery City Commission Act of 1931 (General Acts of Alabama 1931, p. 99). The Montgomery City Commission Act did not undertake to repeal said Article 3, Chapter 20 of the Code, but stated in Section 18, Subdivision 4 that

"All primary elections held under this Act shall where applicable and not in conflict with this Act be governed and conducted in all respects as provided under Chapter 20 of the Code of Alabama."

Likewise, the Act approved April 19, 1933, does not purport to be the ex-

clusive law regulating the voting of absentee ballots. That Act is somewhat inartificially drawn and the machinery and procedure set forth therein must at many places be supplemented by reference to the previously existing law. In its caption the 1933 Act purports:

"To further regulate the voting of absentee ballots, etc."

In the repealing clause of the 1933 Act, instead of repealing as is usual: "All laws and parts of laws, general, special or local in conflict therewith", it states that:

"Nothing in this Act shall be construed as repealing any laws now in effect in this State not in conflict herewith, but to parts of laws as are in conflict herewith are hereby repealed."

Repeal by implication is not favored and the rule is that a general law will not repeal by implication a local law — a law affecting a limited territory — although in form a general law, unless the intent to do so is expressed very clearly. *Tucker v. McClendon*, 210 Ala. 562, 98 Sou. 797.

Chapter 20 of the Code of Alabama, the provisions of the City Commission Act of 1931 (Acts 1931, p. 99), and the provisions of the Act approved April 19, 1933 (General and Local Acts of Alabama, p. 193) should all three be given fields of operation so far as they are not in conflict.

The Montgomery City Commission Act of 1931 (General Acts of Alabama 1931, p. 99) provides in Section 11 for the holding of the municipal election for the three City Commissioners of the City of Montgomery. That election is to be held on the third Monday in May, 1935. The machinery for holding that election is set forth in that section in some detail.

Section 18 (p. 112) of that Act (Montgomery City Commission Act of 1931) provides for the nominating of candidates for the Board of Commissioners, either by party mass meetings, conventions or primary elections. If a primary election is called, and it has been by the City Democratic Executive Committee of the City of Montgomery, it must be held on the third Monday in March, that is, March 18, 1935. The Machinery for the holding of that primary is covered in detail in Section 18 of the Montgomery City Commission Act, the machinery being set out on seven pages of the Act. It is there provided that qualified electors entitled to and desiring to vote absentee ballots may procure the same from the Judge of Probate of the County and shall return the completed ballot, together with the attached affidavit, to the Chairman of the party holding said primary. Section 18 refers to the primary as a "primary or primary election", and in Subsection 3 of the said Act the distinction between the primary election and a city or municipal election appears to be well recognized. As I have heretofore stated, in my judgment, the city or municipal election is governed by Section 11 of this same Act, that is, the Montgomery City Commission Act of 1931.

I do not think the absentee ballot Act, approved April 19, 1933, takes from the Chairman of the City Executive Committee any of the duties placed upon him by the Montgomery City Commission Act of 1931. Section 1 of

the 1933 Act places upon the Probate Judge the duty of receiving the absentee ballots to be voted in "every general, special, primary, or municipal election."

Section 2 of the 1933 Act provides that if the Probate Judge is a candidate in "any general, special or primary election", these duties must be performed by the sheriff, and in the event the sheriff is disqualified, by a person appointed by the presiding judge of the Circuit Court.

Section 3 of the 1933 Act provides that

"In case of any municipal election held at a time different from a general, State or Federal Election, the duties with reference to the handling of absentee ballots, which are now required by the Judge of Probate,"

shall be performed by the Mayor, or if the Mayor is a candidate, then by the City Clerk or other officer performing the duties of Clerk. The other sections of the 1933 Act are, in my judgment, not pertinent to the inquiries.

It seems certain that the Legislature had in mind the distinction between a general election, a primary election, and a municipal election. Unless the context so requires, the word "election" as used in Constitutions and statutes does not include a primary election. 20 C. J. p. 37.

The words "municipal election", as used in Section 3 of the municipal election Act, are placed in opposition to a "General, State, or Federal Election." It seems to me that this is what the Legislature had in mind.

In its last analysis, the question is: Does Section 3 of the 1933 Act repeal the Act of 1931, so far as the duties of the Probate Judge (in the matter of handling absentee ballots in the primary election to be held on March 18) are concerned. For the reasons stated hereinabove, it is my judgment that Section 3 of the 1933 Act (General and Local Acts of 1933, p. 193) does not refer to municipal primary which is to be held on Monday, March 18. As to that primary, in my judgment, the absentee ballots should be procured from the Judge of Probate of Montgomery County; and it is my further judgment that when the ballots have been voted they should be returned to the Chairman of the City Executive Committee of the City of Montgomery. It is my further judgment and opinion that in all other or further respects the law governing the primary to be held in March is set out in the Montgomery City Commission Act of 1931 (General Acts of Alabama 1931, p. 99) and in Chapter 20 of the Code of Alabama.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

February 26, 1935

Hon. W. L. Hobbs,
Clerk and Register,
Phenix City, Alabama.

There are no Ex-Officio fees for services in Justice Courts or Inferior Courts in Alabama.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 18th, 1935 in which you request my opinion as follows:

"Please advise if Recorders, Justices of the Peace, and Judges of Inferior Courts are entitled to a fee for Ex-Officio services for holding preliminary hearings in which the defendant is allowed bond or ordered held to await the action of the Grand Jury, and if so, the amount of the fee, and is same to be charged as part of the cost and collected as is the other cost in the case."

I know of no statute or construction of a statute that gives a Justice of the Peace or a Judge of an Inferior Court Ex-Officio fees. These fees are especially granted by statute to the Probate Judge, the Sheriff and the Clerk of the Circuit Court of each county, but is not extended to the Justice Courts or Inferior Courts.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 28, 1935

Hon. Joseph B. Crow,
Tax Collector, Mobile County,
Mobile, Alabama.

Under Act No. 37, approved February 9, 1935, interest on delinquent taxes should be collected at 8%, prior to the approval of said Act in all cases where the statute does not provide a definite rate. Where the statute fixed a definite rate such controls.

Where no definite rate is fixed by statute, 6% should be charged subsequent to February 9, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please furnish me as soon as possible with an opinion covering the legal rate of interest and effective date on taxes?"

Your inquiry is based, I presume, on Act No. 37, approved February 9, 1935. Said Act is as follows:

"Section 1. That Section 8563 of the Alabama Code of 1923, be and it hereby is amended so that said Section shall read as follows:

"8563. The rate of interest upon the loan or forbearance of money, goods or things in action, except by written contract, is six dollars upon one hundred dollars for one year, and the rate of interest by written contract is not to exceed eight dollars upon one hundred dollars for one year; and at that rate for a greater or less sum, or for a longer or shorter time."

"Approved February 9, 1935."

It is my judgment that so far as delinquent taxes are concerned the interest rate from the date of the approval of the Act, to-wit, February 9, 1935, is 6% and previous to such date is 8%, as to all taxes where the statute does not fix a specific rate. Wherever the statute provides a definite rate, such rate is not affected by said Act No. 37, in my opinion.

In the matter of redemptions of real estate from tax sale, the interest rate is specifically fixed. Strictly speaking, this is not interest but a condition of penalty which the Legislature has prescribed as a requirement to redeem. The amount to be charged, therefore, is the amount fixed by statute.

All interest on taxes is in the nature of a penalty for delinquency and hence whenever the statute fixes a rate such rate controls. If the statute is silent, 8%, the former legal rate, should be charged up to February 9, 1935, and subsequent thereto 6%.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 7, 1935

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Judge of Probate — Cannot sell material to county nor can county purchase material from Judge of Probate even though said Judge is not a member of the county governing body.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 5, 1935, in which you request my opinion if it is illegal for Judge of Probate to sell material to the county in which he is Judge if he is not a member of the county governing body of such county. You also inquire if it is illegal for the county to purchase material for the county from the Judge of Probate of such county if the Judge of Probate is not a member of the governing body.

I am of the opinion that both of your inquiries should be answered in the affirmative.

Section 5024, Code of Alabama 1923, provides as follows:

"5024. County officer interested in county contracts. — Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract for work or services of the county, or is employed in any way under such contract, or is interested in any contract for hire of county convicts, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

It will be noted that the Judge of Probate is one of the officers specifically enumerated in the above quoted section that cannot contract with the county for the sale of good or supplies to the county. It is not essential that he be a member of the county governing body to come within the purview of said section.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 11, 1935

Hon. H. W. Clayton,
Clerk of the Circuit Court,
Marshall County,
Guntersville, Alabama.

1. Opening and closing time for public offices.
2. Holidays are designated by statute; they may or may not be

observed at the discretion of the officer or individual holding office, except Sunday. This must be observed under Section 5539, Code of Ala., 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 22, 1935, in which you request my opinion as follows:

"Will you please advise me as to what hour this office should open and close. I would like to know if we are supposed to take any holidays, if so which ones."

I find no statute fixing the time you are required to open and close your office. It is presumed that you will open at a reasonable hour in the morning and close likewise in the afternoon. I do notice, however, that there is a statute requiring the Judge of Probate to open his office at 9:00 A. M. and close at 4:00 P. M. every day except Sunday. See Section 9577, Code of Alabama 1923, which is as follows:

"Office and office hours. — He must keep his office at the courthouse and open for transaction of business on every day, except Sundays and legal holidays, from nine in the morning until four in the afternoon."

As to holidays I call your attention to Section 9215, Code of Alabama 1923. Here the legal holidays are designated. It is optional with each individual as to whether or not he will observe them. If he does observe them by closing his office, shop, store or other place of business, he violates no law. If he does not, he violates no law. This is true of them all except Sunday. He must close on this day. This is required by statute. See Section 5539, Code of Alabama, 1923.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 11, 1935

Hon. Roy O. Hill, Clerk,
Circuit Court of Houston County,
Dothan, Alabama.

Sheriffs are allowed \$3.00 per day for attendance upon Probate and Circuit Courts when juries are present, but this does not apply to grand juries as the grand jury is provided with a bailiff under Section 6716 of the Code of Alabama and this bailiff is paid by the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 22, 1935 in which you request my opinion as follows:

"Under the scale of Sheriff's Fees in the Code of 1923 is an item allowing sheriffs \$3.00 per day for attendance upon Probate and Circuit Courts when a jury is present, and further specifies that the Clerk shall certify to the County Commissioners the number of days the Sheriff is in attendance upon such courts. Please advise if the Clerk is required, under this section, to certify such attendance upon the grand jury when it is in session."

The section you refer to (Section 7287 of the Code of Alabama, 1923) in part says: "attendance upon the probate court when a jury is in attendance or upon the circuit court when a jury is in attendance, each day to be paid out of the county treasury, \$3.00." This has no connection with grand juries. The sheriff is not paid for attendance upon grand juries, as the Court provides a bailiff for this duty, and he is paid by the county as provided by Section 6716, which is as follows:

"The sheriff of a county must summon one person to serve as bailiff for the grand jury; one to serve as bailiff in every circuit court, or division thereof, in which cases are being tried without juries when directed by the judge; and not exceeding four to serve in every court, or division, in which cases are being tried by juries, when the judge thereof certified that such bailiff or bailiffs are actually necessary."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 11, 1935

Hon. Frank O. Deese,
Judge of Probate, Dale County,
Ozark, Alabama.

1. The Judge of Probate and Commissioners Court should follow strictly the statute in paying for the transfer of patients from their counties to the insane hospital. A contract designating a lump sum for each case would not be authorized under the law.

2. Commissioners Courts and Judges of Probate are authorized to pay mileage and per diem and persons deputized to transfer such patients to hospital, but the need for such deputy or assistant is purely discretionary with the Probate Judge and should not be allowed unless the circumstances demand it.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 22, 1935, in which you request my opinion as follows:

"Will you kindly advise me whether or not the Judge of Probate or the Judge of Probate and the Commissioners Court would have authority to make a lump sum contract with the Sheriff or some other person for conveying indigent patients to the Insane Hospital? We contemplate making such an agreement for an agreed sum for each patient, it being intended to make such sum slightly less than the expenses as computed on the basis of railroad fare and other traveling expenses.

"Kindly advise me whether Section 1445 of the Code of 1923 authorizes the payment of a per diem for a person or persons deputized to convey a patient to the hospital."

It do not think it would be proper for your Commissioners Court to agree on a lump sum for conveying patients to the insane hospital. The statute designates how these expenses are paid and the statute should be followed. I call your attention to Sections 1445 to 1447, both inclusive, and especially your attention to Section 1445, supra, which is as follows:

"The judge of probate shall depute one or more persons, relatives, friends, or officers, as he may see fit, to convey the patient to the hospital, and all necessary expenses incurred in conveying an indigent patient to the hospital shall be paid out of the county treasury on order from the county commissioners."

Fees and costs of court are penal in their nature and should be strictly construed. 42 Ala. 514; 53 Ala. 133.

Answering your second inquiry, it is my opinion that Section 1445, supra, contemplates paying the expenses of anyone deputized to assist in the transfer of insane persons to the hospital; that is, if the Judge of Probate should decide such deputy was necessary. This is a matter that addresses itself to his sound discretion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 11, 1935

Hon. L. C. Garrison,
Probate Judge of Walker County,
Jasper, Alabama.

County Commission can legally purchase time stamp, cash register, safe for county offices under Section 231, Code of Alabama, 1923, same being "office supplies."

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 22, 1935, which is as follows:

"May the County Commission of Walker County purchase, for the use of the Probate Court, an electrically operated time stamp? This is a machine with clock works in it that stamps the minute, the hour, the day, month and year on papers that are filed for record. This is a very important piece of equipment for an office of this kind.

"I would also be pleased to have your opinion as to whether or not this Commission may purchase for the use of the Probate Court a Cash Register for daily use. Also, would they be authorized to purchase an iron safe for the use of the Probate Court in which to keep cash and valuable papers that should be kept in a safe place."

I am of the opinion that all of your questions should be answered in the affirmative.

Section 231, Code of Alabama, 1923, is as follows:

"The following claims are declared to be preferred claims against the county, and they shall be given priority in the order named:

3. Premiums for fire insurance on the public buildings of the county; premiums on surety bonds of public officers where authorized by law to be paid by the county; claims for necessary stationery and office supplies, including typewriters and supplies for offices of the probate judges, clerk and register and court reporter."

In my judgment, a time stamp, cash register and safe all come under the general heading of "office supplies", and, therefore, the Court of County Commissioners can legally purchase them for the use of the county officers, if in their judgment it is to the best interest of the county to do so. — **Floyd County v. Graham**, 100 S. E. 728, 24 Ga. App. 294.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 11, 1935

Hon. George W. Hulme,
County Superintendent of Education,
DeKalb County,
Fort Payne, Alabama.

Schools — Vacancies in County Board of Education are filled in accordance with Section 88 of the School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 4, 1935 which reads as follows:

"On March 4, 1935, the DeKalb County Board of Education met in a call session. The President of the Board and two other members were present. Resignations from the two remaining members were presented and accepted by a motion, second, and unanimous vote.

"According to Section 88 of the Alabama School Code, 1927, the Board has the duty of filling these vacancies by appointment.

"County Board member Young nominated two persons. County Board member White nominated two other persons.

"According to Section 88, 'the vacancy shall be filled by appointment by a majority of the remaining members of the County Board. * * * ' However, Section 91 has this to say: 'No motion or resolution shall be declared adopted without the concurrence of the majority of the whole Board.'

"Now, the question before this Board is whether or not these vacancies can be filled with the first provision, Section 88, or shall the statement in Section 91 be the guide.

"It is certain that the law contemplated only **one** vacancy at a time, and in case of a single vacancy, the majority of the remaining would be a majority of the whole Board. Yet in the case of two vacancies, it seems that there would have to be a unanimous vote of the three remaining members in order to comply with the provision stating that no motion or resolution can be passed without the concurrence of the majority of the whole Board.

"Surely the 'whole Board' would be interpreted as the five members, which, by law, constitutes the said Board:

"Does not the provision in Section 91 guide the Board in all its deliberations?

"We request your opinion on this single question:

"In view of the above facts, can the County Board fill the vacancies by a majority vote of the remaining members of the present Board, or does the Board have to agree unanimously to fill these vacancies, since the three remaining members are required to constitute a majority of the whole Board?"

In answer to your inquiry I am of the opinion that the vacancies in question may be filled by a majority vote of the remaining members of the present Board.

Vacancies in the County Board of Education membership are filled under Section 88 of the School Code of 1927, which provides as follows:

"Vacancy in County Board Membership. — In the event a vacancy occurs in the office of members of the County Board of Education, the vacancy shall be filled by appointment by a majority of the remaining members of the County Board of Education, and the appointee shall hold for the unexpired term. In the event the vacancy is not filled by the remaining members of the County Board within thirty days, the State Superintendent of Education shall fill such vacancy, by appointment. The County Superintendent of Education shall notify the State Superintendent of Education when a vacancy in the office of member of the County Board of Education has not been filled within thirty days.

Section 91 of the School Code of 1927 provides in part as follows:

"The rules generally adopted by deliberative bodies for their government shall be observed by the County Board of Education. No motion or resolution shall be declared adopted without the concurrence of the majority of the whole Board."

"Majority of the whole Board" as used in this Section, in my opinion, means a majority of the Board as then constituted at the time the motion or resolution is adopted. It does not necessarily mean a five member Board. In the instant case the whole Board consisted of only three members at the time the motion in question was introduced.

Moreover, Section 88, *supra*, specifically provides that vacancies shall be filled by a majority of the remaining Board. This specific provision would govern over the general provision of Section 91, *supra*, even though a different construction be placed on Section 91 than as above stated. Special provisions relating to specific subjects control provisions relating to general subjects and things specially treated will be considered as exceptions to general provisions. — *Herring v. Griffin*, 211 Ala. 225; *Fuqua v. County of Mobile*, 23 Ala. App. 74.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 12, 1935

Hon. J. F. Posey,
Probate Judge of Autauga County,
Prattville, Alabama.

1. Terms of office of Members of Jury Board fixed by Section 3 of an Act approved February 20, 1931.

2. Term of office of Members of Board of Registrars fixed by Section 371, Code of Alabama, 1923.

3. Term of office of Ex-Officio Notary Public concurrent with that of Governor who appointed him.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 20, 1935, which is as follows:

"Will you please give me an opinion on the following question?

"Did the terms of Jury Commissioners, Registrars of voters and Ex-Officio Justices of the Peace expire with the terms of the Governor that appointed them?"

In regard to the terms of Jury Commissioners, I refer you to Section 3 of an Act approved February 20, 1931, General Acts 1931, Pages 55, 56, which Section is as follows:

"Section 3. That within ninety days after the passage and approval of this Act the Governor shall appoint the members of each Jury Board whose terms of office shall be as follows and until their successors are appointed and qualified: One member shall hold office until the first Monday after the second Tuesday in January, 1932; one member shall hold office until the same day in 1934. The Governor in making such appointments shall designate the terms to be held by each appointee respectively; and upon the expiration of each of these terms, the Governor shall appoint successors who shall hold office for three years from the expiration of the term of office of their respective predecessors."

In regard to the term of Registrars, I refer you to Section 371, Code of Alabama 1923, which is as follows:

"371. Terms of office. — The registrars so appointed under this article may be removed at the will of the appointing board, or a majority of the members thereof, at any time, with or without cause, and without giving their reasons therefor; and if not so removed, the registrars may hold office for four years from the time of their appointment and until their successors are appointed."

In regard to term of office of Notaries Public Ex-Officio Justices of the Peace, I refer you to Section 9251, Code of Alabama 1923, which is as follows:

"9251. Appointment and term of office. — The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, as defined by law, shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is appointed; and shall hold office for the term of four years from the first Monday after the second Tuesday in January, 1911, and every four years thereafter."

I am also enclosing herewith a copy of an opinion recently rendered by this office dealing with the term of office of a Notary Public Ex-Officio Justice of the Peace.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 12, 1935

Hon. E. A. Hammett,
Judge of Probate,
Talladega County,
Talladega, Alabama.

Depositories — Banks designated as County Depository in lieu of County Treasurer need not necessarily pay interest on daily balances.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 6, 1935 in which you request my opinion as to whether or not a bank designated as a County Depository in lieu of a County Treasurer under Section 316, Code of Alabama of 1923, must necessarily pay interest on daily balance. You also inquire as to whether or not, in the event no bank offers to pay such interest, the Court of County Commissioners may designate a bank which is willing to perform the duties imposed on a County Depository without charge.

I am of the opinion that your first inquiry should be answered in the negative and your second in the affirmative.

The provisions governing County Depositories in lieu of County Treasurers is found in Article 2 of Chapter 17 (Sections 312-324) Code of Alabama 1923. Section 316, which governs the selection of such depositories, provides as follows:

"316. Depositories, how selected. — The board of revenue or court of county commissioners shall from sealed bids place the county funds, the bids being opened on the first Monday in December of each year, with such incorporated state or national bank in the several counties, as offers the highest rate of interest to the county on daily balances of bank deposits, such placing of said county funds to be for the period of the following calendar year."

In construing Article 2, supra, our Supreme Court has held that its purpose was to provide a safe depository for county funds under the most advantageous circumstances, and to the best interest of the county. Members of the Board of Revenue and Court of County Commissioners are considered guardians of the interest of the county. With particular reference to Section 316, supra, it held that the bids offered must be satisfactory to such Boards of Revenue or Courts of County Commissioners, leaving the determination thereof to the exercise of their sound discretion. The bid offering the highest rate of interest should be given grant, but not exclusive consideration, leaving such to the discretion of these authorities in determining what is the best interest of the county. — **Citizens Bank and Security Co. v. DeKalb County**, 209 Ala. 646, 96 So. 778.

Bearing in mind the construction placed on the statutes under consideration by our Supreme Court, it is my opinion that the depository selected need not necessarily pay interest on daily balances and the Court of County Commissioners may select a bank which will perform the duties of a depository without charge, provided such is for the best interest of the county. In this respect the Court of County Commissioners may exercise its discretionary power.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

Hon. D. E. Laslie,
Judge of Probate,
Macon County,
Tuskegee, Alabama.

March 13, 1935

Where a guardian makes bond to guarantee his guardianship and where the bonding company requires an itemized statement of final settlement before releasing the guardian, the guardian or the probate judge may be paid for making this certified statement under Section 3132, Code of Alabama, 1923, by following strictly the requirements there laid down.

Dear Sir:

I have your letter of February 28, 1935, in which you request my opinion as follows:

"When a guardian makes application to a surety company for a guardianship bond, he agrees in the application to 'make reports in form required by the corporation of the condition of the estate.' The surety company makes the bond as requested and demands of the guardian a certified copy of his settlements in the Probate Court. Of course the guardian has to pay the usual rate charged by the Court for the certified copy. Should the guardian be allowed credit for the money paid by him for said copy? This question has come up in my Court, and I would appreciate an early reply."

Answering your request I call your attention to Section 8133, Code of Alabama, 1923, which is as follows:

"8133. Fees and commissions of guardian. — The guardian hereunder shall be entitled, for his services, to commissions of two and one-half per cent on his receipts, and two and one-half per cent on all disbursements, including the amount of money paid or decreed to be paid to the ward, or to a succeeding guardian. Said guardian shall also be allowed any reasonable premiums paid on his bond as guardian, and for special expenses incurred or services rendered, the guardian may be allowed such compensation as is just and reasonable having due regard to the value of the estate, and of the services so rendered. But no allowance of actual expenses, or for special services, must be made, except upon itemized statement of same, verified by affidavit; and in its decree the court must state each item for which such compensation is allowed."

You will note that the above statute makes provisions for paying the premiums on such bond when made in a surety company out of the estate of the ward but says nothing about the certified copy of settlement you refer to. However, I think this may be paid by following the provisions of this Section.

"and for special expenses incurred or services rendered, the guardian may be allowed such compensation as is just and reasonable having due regard to the value of the estate, and of the services so rendered. But no allowance of actual expenses, or for special services, must be made, except upon itemized statement of same, verified by affidavit; and in its decree the court must state each item for which such compensation is allowed."

Of course, the above provision must be strictly followed as all costs and fees are penal in their nature and must be strictly construed. — 42 Ala. 514; 16 Ala. 773.

This is a new statute appearing for the first time in the Code of 1923 and as far as I am able to ascertain has not been construed by either of the courts of last resort. But I think the construction given above is correct.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 13, 1935

Hon. Wm. W. Hill,
Judge of Probate,
Montgomery, Alabama.

Where persons are duly registered as electors by the Board of Registrars, the Probate Judge is without authority to strike the names of such persons from the list of registered voters, even though the applications of such persons on file in the office of the Probate Judge show affirmatively that such persons were not twenty-one years of age at the time of registration and even though such applications of such persons show affirmative irregularities in the matter of residence qualifications.

Opinion by the Attorney General.

Dear Sir:

Your letter of February 20, 1935, has been received. You attach to your letter two applications for registration, one of which applications illustrates your inquiry relating to residence. You set forth the facts so clearly in your inquiry until I deem it unnecessary to incorporate the two applications in setting forth your inquiry. I am, therefore, merely quoting your letter which I believe contains all facts necessary to a determination of the questions involved. Your letter follows:

"In making up a poll list from the data given me by the Registrars I find the following condition to exist:

"there was a considerable number of persons registered on January last. The applications that were filed in my office contain the following: date of birth, age and residence. On some of these the date of birth as given show that applicant was not of age at the time of registration and will not be of age until after the election on February 26th and also after the City election in March and May. To illustrate: The application recites applicant's age as 20 years, date of birth March 27th, 1914. Others show they will not become 21 years old until the latter part of this year. These persons were registered. Please advise me whether or not these names should remain on the list of qualified voters, or have I the right to strike them from the list or is it the duty of the Registrars. That I may make myself clear I am enclosing you a copy of one of these applications for registration with the action of the Board thereon. There are quite a number of these persons. It seems that the Board of Registrars acted upon the assumption that any one who would be 21 years of age at the next general election in 1936 had the right to register. I am especially anxious to know whether it is my duty, and it certainly is the duty of the Registrars to strike them off, but if they, the Registrars, fail to do so, then am I authorized to take them off of the poll list.

"Another problem presents itself — in the application for registration the applicant makes the declaration that he became a bona fide resident of the State of Alabama, to-wit, September 1934, and he likewise is registered on the theory I presume that he will be here two years at the

general election in 1936. This is only shown by the application for registration and they are registered. Likewise tell me whether or not these men should be put upon the poll list, and if not have I the right to take them off or is it the duty of the Registrars, and if the Registrars do not take them off shall I remove their names from the poll list. I am likewise sending you a copy of one of these applications for registration and the action of the Board of Registrars on same.

"Please advise me as soon as you can for the reason that I have just had the poll list printed, and it will be necessary to have these names scratched from the poll list if I have that right, and the Board of Registrars does not take them off. Please advise me on this as it will take considerable time to get these names off of the lists if you decide that they shall be stricken.

"I am anxious to get the poll list as near as I can under the powers that I possess to be correct."

I also quote herewith your letter of February 20th, as follows:

"You will recall that I wrote you in reference to the parties who registered before they were 21 years of age, and those who registered before they had been in the State two years. These facts are shown upon their application for registration and upon their certificates of registration. Have I the right to strike these names from the poll list?"

It will be borne in mind that this office has heretofore expressed the opinion that a person is not entitled to registration unless such person is 21 years of age at the time he offers for registration.

In this opinion I shall discuss and attempt to decide both of the questions set out in your letter of February 20th, one relating to residence and the other relating to age, together with the right of the Probate Judge to strike the names of certain persons from the list of registered voters, when the applications of such persons on file in the office of the Probate Judge show certain irregularities as to age and residence.

I think it would be advisable for us to review the law relating to the authority, powers and duties of the Board of Registrars, and to review the law relating to the powers and duties of the Probate Judge in preparing the list of qualified voters. I shall also review the cases construing the powers and authorities of both the Probate Judge and the Board of Registrars.

Your inquiry indicates that certain persons were duly registered by the Board of Registrars of Montgomery County; that the applications for registration on file in your office show that these persons registered before they were 21 years of age or before they had been in the State of Alabama for two years.

You desire to know whether you have the power as Probate Judge, with this affirmative information before you, to strike the names of such persons from the list of qualified voters. It is presumed that such persons are otherwise qualified and for this reason the only question for information here is

the right of the Probate Judge to strike from the registration list a person who was duly registered by the Board of Registrars and certified on the registration list prepared by the Board of Registrars, such list having been certified by the said Board to you as Probate Judge.

In this connection I beg to refer you to Section 177 through Section 195, both inclusive, of the Constitution of 1901. The provisions of these two sections relate to the right to vote and to registration of electors.

It will be noted that in Section 186 the Legislature is required to provide for the registration after the first day of January, 1903, of all qualified elector, and until the first day of January, 1903, electors had to be registered in the manner provided by Section 186. The registration provided for in Section 186 of the Constitution was construed by our Supreme Court in the case of *Giles vs. Teasley*, et al. 136 Ala. 164, in which it was held in head-note 2, as follows:

"In the exercise by the Board of Registrars of the authority conferred upon them by the Constitution of 1901 in determining the qualifications of electors in the State of Alabama and of the right to be registered as a voter (Constitution 1901, Article 8, Sections 180 to 188), such Board of Registrars act in a judicial capacity; and for their judicial determination that an applicant for registration does not possess the requisite qualifications of an elector and their subsequent refusal to register him, they are not liable for damages."

This case seems to decide that the Board of Registrars, acting under the provisions of Section 186 of the Constitution, act in a judicial capacity. This case was decided at the November term of the Supreme Court in the year 1902. In providing for the registration set out in Section 186 of the Constitution, it appears fairly certain that the Legislature had in mind the construction placed on Section 186 by the Supreme Court in the *Giles* case, and intended that the Board of Registrars set up by the Legislature was to be a judicial body, with judicial power to register or refuse to register any person offering for registration.

The registration laws were rewritten by an Act of 1920, and, with certain amendments hereinafter referred to, appear as Sections 361 et seq. of the Code of 1923.

Section 370 of the Code provides for the appointment of a Board of three members, one of whom shall be designated as chairman; Section 371 for their terms of office; Section 372 provides for the filling of vacancies; Section 373 provides for their compensation and Section 374 provides for the oath. The last mentioned section is as follows:

"Before entering upon the performance of the duties of his office, each registrar shall take the same oath as required of the **judicial officers of the State**, which oath may be administered by any person authorized to administer oaths. The oath shall be in writing and subscribed by the registrar and filed in the office of the Judge of Probate of the County. Said registrars are **judicial officers** and shall **act judicially in all matters pertaining to the registration of applicants.**"

Section 375 provides for the holding of fixed meetings and the notice of such meetings. Special registration is provided by Section 376. Section 377 provides as follows:

"No person shall be registered except at the courthouse or in the precinct or ward where he or she resides."

Section 378 provides for the issuance of a certificate of registration. Section 379 provides for meetings where there is more than one courthouse in a county. Section 380 is as follows:

"The Board of Registrars shall have power to examine under oath or affirmation **all applicants for registration and to take testimony touching the qualifications of such applicants.** Each member of such board is authorized to administer the oath to be taken by the applicants and witnesses, which shall be in the following form and subscribed by the person making it and preserved by the Board, namely; (here follows the oath).

Section 381 sets out the qualifications necessary to entitle a person to be registered as an elector. Section 382 provides:

"Any person making application to the Board of Registrars for registration **who fails to establish the evidence to the reasonable satisfaction of the Board,** that he or she is entitled to register, may be refused registration."

Section 383 provides that the action of a majority of the Board of Registrars shall be the action of the Board, and the majority of the Board shall constitute a quorum for the transaction of business.

In an opinion of the Attorney General appearing in Biennial Report 1928-1930, page 741, it was held that

"In order for one to legally register, he or she must personally appear before the Board of Registrars at the specified time and place and be personally examined by said Board as to the necessary qualifications pre-requisite to becoming a qualified voter."

In support of this, Sections 377 and 380 were quoted and cited. Likewise Section 3913 of the Code providing as follows:

"Any person who registers for another, or who knowingly and willfully registers or procures the registration of any person not possessing the qualifications of an elector, or who registers more than once, and any registrar who enters the name of any person on the list of registered voters without such person having made application in person under oath on a form provided for that purpose, or who knowingly registers any person more than once, or who knowingly enters a name upon the registration list as the name of a voter, without any one of that name applying to register, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one year nor more than five years,"

was cited, and the provisions that such application must be made in person, under oath, was emphasized, and the conclusion drawn that the Legislature "never intended that one should be allowed to register other than in strict compliance with Article 3 of Chapter 19 of the Code of Alabama 1923.

It, therefore, appears that by Section 374, the Board of Registrars are expressly declared to be judicial officers and that a person desiring to be registered must appear in person before the Board of Registrars, and that the Board of Registrars may examine such person and witnesses having knowledge of his qualifications and from all the evidence before the Board render judgment, either registering such person or denying him registration.

If after such hearing the person applying is denied registration, he has the right to appeal, which right is specifically given by Section 384.

It will be also noted that the framers of our Constitution provided in Section 186 of the Constitution that:

"Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within thirty days after such denial, by filing a petition in the Circuit Court or Court of like jurisdiction held for the County in which he seeks to register, to have his qualifications as an elector determined."

What then is the effect of the Board of Registrars' registering a person whose written application shows that he was under the age of twenty-one at the time of registration, and can the Probate Judge, on the basis of such written application, go behind the judicial action of the Board of Registrars and strike such name from the list of registered voters because of facts appearing in such application?

It is my opinion that he has no such power. The Board of Registrars is required to examine the applicant, examine other witnesses and from all the evidence determine his qualifications. There is no such power invested in the Probate Judge and hence, in my opinion, if the Board of Registrars have certified to him a person as duly registered, he is without authority to strike such name from the list of registered voters.

In an opinion rendered to you under date of February 18, 1935, I said: "To be an elector, one must be twenty-one years of age. When one has registered as an elector, the registration is decisive of the fact that he is twenty one years of age and has the right to vote at any election held after his registration so far as his age is concerned." I cited an opinion of a former Attorney General, which opinion was written by Assistant Attorney General Evans, under date of October 19, 1929. Biennial Report of Attorney General 1928-1930, p. 672, in which almost the exact language used in my opinion to you was found. The authority for these opinions is the famous case of *Shepherd vs. Sartain*, 64 South. 57, 185 Ala. 439. On page 63 it is stated:

"The registration books and lists prepared and kept by the County Board of Registrars are conclusive as to the facts of the registration of those voters whose names affirmatively appear thereon and presumptive evidence of their qualifications.

"Such registration books and lists duly authenticated are conclusive evidence that voters whose names do not appear thereon are not registered voters and are not entitled to vote, unless their registration is evidenced by a certificate thereof issued as provided by law."

Again on page 64, it was said: "The acceptance of the voter by the Registrars as one qualified for registration is an ascertainment that he is twenty-one years of age."

This case was followed in *Davis v. Teague*, 125 South, page 51, in which it was stated (p. 53):

"Among other items of evidence offered and received pertaining to this question over the appellant's objection, was the book made of the county registrars containing an alphabetical list of registered voters of Ashville, Precinct 1, St. Clair County for the year 1914 and returned by them to the office of the Probate Judge under the provisions of Section 318 of the Code of 1907, Section 401 of the present Code.

"When this section of the Code is read in connection with the preceding sections of Article 3, Chapter 19 of the Code (Sections 370 et seq.), we think it is clear that the 'registration list' made in the book furnished by the Secretary of State under the provisions of Section 397 of the Code, and returned to the Judge of Probate by the registrars under the provisions of Section 401, must be regarded and held to be the official register — the permanent record — of qualified voters."

In *Board of Revenue vs. Jansen*, 139 South, 358, the *Teague* case was cited as authority for this statement:

"So that when the Legislature of 1931 undertook to amend it, Section 402 only provided for assistants to the Judge of Probate in the preparation of a list of voters and the delivering of it to the inspectors. The duty to keep and prepare such list is provided by Sections 387, 388. **It must be made from the registration books or list filed in his office by the Registrars, as provided by Sections 396, 401.** Section 396 requires the Registrars, after each meeting for purging the registration list, to file in the office of the Probate Judge the book in which they enter the names of all electors stricken from the list. By Section 401 they shall return to the office of the Probate Judge a registration list by precincts with other stated information. **The book containing such list is the official register.** *Davis v. Teague*, supra.

The argument that the action of the Board of Registrars is controlling is emphasized if not concluded by the following provisions of the statutes:

Section 392 provides for the meeting of the Board of Registrars for the purpose of purging the registration list.

Section 393, as amended by the Act of 1927, page 276, provides that notice shall be given to any elector whose name is proposed to be stricken from the list.

Section 395 provides as follows:

"On said date the board shall proceed to consider the case of each elector whose name it is proposed to strike from the registration list, and determine the same. Any person whose name is stricken from the list may appeal from the decision of the board and a trial by jury may be had, and the board shall forthwith certify the proceedings to the circuit clerk or clerk of a court of like jurisdiction, who shall docket the case in the circuit court of the county, or other court of like jurisdiction. The solicitor shall represent the state in the trial of said cause."

It appears from these decisions that the Board when it meets for the purpose of purging the list must give notice to all persons whose names are proposed to be stricken therefrom; that the Board must consider and pass on, judicially, the name of any person and if upon hearing, it judicially finds that such person's name should be stricken; such person has a right to appeal to the Circuit Court.

In an opinion under date of February 7, 1930, to the Judge of Probate of Chilton County, Biennial Report of the Attorney General, 1928-1930, it was held that before a person's name could be stricken from the list by the Board of Registrars, notice must be given to him. In my opinion, this has direct bearing on the question before us. The Board of Registrars cannot strike from the registered list a person's name, without giving such person notice, opportunity to be heard and a judicial finding after hearing the evidence. If this be true, it follows that no other person possesses such authority.

By Section 398, it is made the duty of Board of Registrars to ascertain the names of persons who should be stricken from the registration list, and by Section 399, when the Board strikes the name of an elector from the registration list, it must show the reason for striking said elector from the list.

In an opinion to L. H. Clark, Chairman, County Board of Registrars, Lauderdale County, dated February 16, 1932, Biennial Report of Attorney General 1930-32, page 705, it was stated in part:

"If he (person offering to register) has not moved back to the county, but maintains his home life elsewhere, his attempt to register in the county is a nullity and if he has been registered without having moved back to the county with intention of making it his home, such registration is unlawful, and his name should be stricken from the registration list after due notice given to him and after opportunity afforded him to appear before the Board and show cause why it should not be done.

"The Act of the Board of Registrars in purging the registration list is judicial and not ministerial in nature. The Code provides a method of appeal from its decisions but no person, not a member of the Board, can dictate to it whom it shall and whom it shall not purge from the list.

In an opinion rendered to Hon. A. R. Glasgow, Judge of Probate, Cleburne County, under date of April 23, 1932, Biennial Report 1930-1932, page 798, it was held: that:

"The Judge of Probate is without power to reinstate a name on the qualified list which has been stricken from said list by the board of registrars." (Headnote).

In the body of the opinion, it was stated:

"Now you will find that there is a provision in Section 387, Code of Alabama, 1923, which permits the Judge of Probate, under certain conditions where the name has been inadvertently or through mistake omitted from the list, and where the party has paid all poll tax due and is entitled to vote, etc., on proper proof to add such name to the list, but certainly this does not include names that have been stricken by the board of registrars for any reason, but only include such names as were inadvertently or through mistake left off.

"The reason for this is that the registrars in striking a name from the list after hearing, act in a judicial capacity and this being true the only remedy the applicant or petitioner has is by appeal to a jury in the Circuit Court as is provided by Section 395, supra."

Section 401, to which we have heretofore referred, provides as follows:

"The board of registrars shall each year within two weeks after the expiration of the time prescribed for registration, make a copy of the list of names registered, stating the residence, color and sex of the persons registered by precincts, if not in an incorporated city or town, or by word if in an incorporated city or town, which copy, along with the registration list, must be returned to the office of the judge of probate of the county. The judge of probate shall certify an alphabetical list to the secretary of state. The judge of probate shall keep both the original list filed by the registrars and the alphabetical list made therefrom as recorded in the office of the Judge of Probate of the county which shall be open to public inspection.

This is the so-called list of registered voters or registration list which must be prepared by the Board of Registrars and returned to the office of the Judge of Probate. Presumably, it contains the names of all persons who have been registered and whose qualifications were satisfactory to the Board of Registrars, and the Registrars sitting in their judicial capacity have held to be entitled to registration, and likewise it does not contain the names of those who, in the opinion of the Board of Registrars, were not entitled to registration, nor does it contain the names of those which the Board of Registrars, acting under the provision in Section 392, and pursuant to the notice required by Section 393, and after hearing provided by Section 395, have stricken from the list.

Such list is therefore, the registration list of the county and under the authorities heretofore cited is conclusive evidence as to the fact of the registration of those persons whose names appear thereon.

"A registration list is conclusive evidence as to the fact of registration of those persons whose names appear thereon." 20 C. J. p. 87.

Shepherd vs. Sartain, supra. Board of Revenue et al. vs. Jansen, supra. Davis vs. Teague, supra.

As bearing on the general proposition of the judicial nature of the action of the Board of Registrars, we call attention to the case of Arrison, et al. v. Cook, et al. 6 District of Columbia Reports, p. 335, in which it was held (headnote):

"Where on a return to an application for mandamus against the Board of Registrars of Election to compel the striking of certain names from the list of voters, it appears that the Board has fully exercised the judgment and discretion entrusted to it by the law in determining the qualifications of applicants, and that the board is satisfied that the persons registered are residents of the District, and it does not appear that any fraud or corruption was practiced by the board, the Court will not go behind the answer to take proof whether the persons registered were voters.

Mandamus was therefore denied."

As having some bearing on the limited power even of the Board of Registrars to act in purging the list strictly at the times provided by statute, we call attention to *People ex rel v. District Court etc.* 78 Pac. 684 (Colo.):

"It is not impossible, that, if the law should be construed to vest in the judges of election the power at their second meeting which it is claimed on the part of counsel for petitioner they have the right to exercise, the representatives of the political party on whose behalf this application is presented would find that on Tuesday next, in other precincts where a majority of the election judges are of the opposite political faith, the names of persons registered would be stricken from the list to their great detriment. It was to prevent a possible exercise of such arbitrary power by judges of election, whose actions might be influenced by political affiliations, that the law has wisely prescribed that, when certain formalities are complied with, names shall be placed on the registration lists. Persons whose names appear on such lists are prima facie entitled to vote, but they may be challenged when they offer to vote, so that ample provision is made to prevent those from voting who do not possess the necessary legal qualifications."

The foregoing definitely establishes the fact that the Board of Registrars in registering a person as a qualified elector acts judicially after personal appearance, examination of the persons, witnesses and the taking of other evidence and making a judicial decision thereon and likewise the Board in purging from the list of persons not qualified, does so in a judicial capacity after hearing the person's defense, if any, and with opportunity to appeal from adverse decision of the Board.

In an opinion to Hon. Will Elrod, Chairman, Board of Registrars, DeKalb County, dated May 2, 1928, Biennial Report of Attorney General 1926-1928, the following inquiry was made:

"We desire an opinion on this question:

Voters who have heretofore registered, some of them before us and some before prior Boards of Registrars, appear now and say there is a discrepancy between the receipt given them and the record made on the books and the real facts. For instance, a man who is sixty-five years old may show upon the receipt and upon the record to have been born at a date which would make him only thirty-five years old; or his name may appear on the receipt and on the record as John Brown when he says his name is Jim Brown."

The question was asked: Could the Board of Registrars make these corrections at any time except when in regular session, as provided by the Code? It was held that the Board of Registrars had no authority to meet for the purpose of correcting such errors. Opinions of the Attorney General 1920-1922, p. 433; 1924-1926, p. 354 were cited.

It therefore appears that the Board of Registrars cannot strike from the registration list a person duly registered except at a time and in the manner provided by law.

Can the Probate Judge strike such person because the application shows that the person applying was not twenty-one years of age?

If the Probate Judge has any authority it is to be found in Section 387 of the Code as amended by the Act of 1927, page 274. The amended section 387 is as follows:

"The Judge of Probate shall, from the registration lists heretofore and hereafter returned to his office, including those registered prior to January 1, 1902, and excluding those names stricken therefrom, as shown by the list returned to him under Section 401 make correct alphabetical lists of all electors registered by precincts and by districts of precincts, where precincts have been divided or subdivided, which list shall be certified by him officially to be a full and correct copy of the list of registered electors for each precinct, and where a precinct has been divided or sub-divided, for each district or each precinct respectively, as the same appears from the returns of the registrars on file in his office. The Judge of Probate shall after the first day of February, 1922, and of each year thereafter, compare such official list of registered electors with the poll tax lists which have been furnished him by the Tax Collector, and shall ascertain from such comparison the names of such persons on the official list of registered electors who have failed to pay any poll tax which they are legally due, and by such comparison and other available information, said judge of probate shall make correct alphabetical lists of all of the qualified electors registered by precincts and of districts of precincts where precincts have been divided or subdivided, and who have paid all poll tax due. Said lists so made up shall be published by him in some newspaper with a general circulation in said county on or before the 15th day of April, 1922, and of each two years thereafter, and together with said lists there shall also be published a certificate that said list constituted the correct list of all qualified electors who will be entitled to vote in any elections held in said county from the time of such publication until the first day of May of the next succeeding year, and also a notice that any voter duly registered whose name has been inadvertently or through mistake omitted therefrom and who has paid all

poll taxes due and who is legally entitled to vote shall have ten days from said publication to have his or her name entered upon said list of qualified voters. If within such ten days any voter shall reasonably satisfy said judge of probate by proper proof that any name should be added to such list, his or her name shall be added thereto. An alphabetical list by districts and precincts of those so added within said ten days shall be prepared and published by said Judge of Probate in some newspaper with a general circulation in said county on or before the first day of May, 1922, and each two years thereafter. The alphabetical list of voters published by said judge of probate on or before the fifteenth day of April, together with the names added and published on or before the 1st day of May, shall be the official list of qualified voters in said county and for the districts and precincts therein for the next ensuing year, until a new list is published and no person whose name does not thereon appear shall be allowed to vote nor shall he or she be allowed to vote except in the precinct, or if the precinct has been divided into districts, in the district in which his or her name on said list appears, unless such person complies with the qualifications prescribed by law for challenged voters, and the judge of probate shall deliver, or cause to be delivered, to the inspectors at each voting place in his county, a list of said qualified electors immediately preceding every election or primary."

This section provides, in part, that the Probate Judge shall compare such official list of registered electors with the poll tax lists which have been furnished him by the Tax Collector, and shall exclude from such comparison the names of such persons on the official lists of registered electors who have failed to pay any poll tax which they are legally due, and by such comparison and other available information, the probate judge shall make a correct alphabetical list of all the qualified electors registered by precincts.

If there is any authority of the Probate Judge to strike from the list of registered electors the name of any person certified to him by the Board of Registrars, it is by virtue of the requirement that he shall make a **"correct alphabetical list"**. However, in my judgment, his duties are limited and largely ministerial. He is limited to the registration list returned to his office including those registered prior to January 1, 1902, and excluding those stricken, as shown by the list returned under Section 401. Consequently, in comparing the list of registered electors with the poll tax list, he is confined to the registered list as certified to him by the Board of Registrars, and in securing other available information, it is my judgment that such term refers primarily to the payment of poll tax. Clearly, the determination of whether a person has or has not paid a poll tax is a ministerial act. The records of the receipt of the Tax Collector or other available information show the facts vel non. If the person is on the registered list and has paid all poll taxes, it is the duty of the Probate Judge to place him on the qualified list. There is nothing in the payment of a poll tax which is judicial in its nature, either on the part of the tax collector collecting the tax or in his certifying it to the probate judge or in the probate judge's checking such list. A person may pay poll tax of his own volition, whether he is otherwise qualified or not, and there is no requirement that he do so, and no qualification with which he must comply to be allowed to do so. The act is clerical and ministerial.

It has been suggested that the case of *Malone vs. Jones*, 219 Ala. 236, 122

So. 26, is authority for holding that the Probate Judge, in preparing his list, acts in a judicial capacity.

The question presented in this case was this: A person's name appeared on the qualified list for 1926; the probate judge omitted such person's name from the list in 1928. Mandamus was sought to require him to add the name to the 1928 list, apparently, chiefly, on the ground that as the name appeared on the 1926 list, he had no right to leave it off the 1928 list. Mandamus was denied because no proper showing was made to require the Probate Judge to add such name to the supplemental list made up under the provisions of Section 387.

Upon examination of the original record in this case, being 7th Div. No. 858, Supreme Court Record, October Term, 1928-1929, we find that the respondent's answer to the petition for mandamus averred that the petitioner had not paid all poll taxes due by him to the State of Alabama for the year 1902. This case, therefore, is not authority for the right of the Probate Judge to strike the name of a person from the registration list, who has been duly registered by the Board of Registrars. It merely upheld him in his right not to add in his supplemental list the name of a person originally omitted because of the failure to pay poll tax.

I wish also to call your attention to Sections 3906 and 3915 of the Code of Alabama, 1923. Section 3906 provides that any person who knowingly attempts to vote when he is not entitled to vote is guilty of a felony; while, Section 3915 provides that any Judge of Probate who knowingly puts the name of any person on the list of registered voters who is not registered is guilty of a misdemeanor. I cite these sections for the purpose of showing how sacredly the law regards the registration list, and also for the purpose of showing that the law places a certain amount of responsibility on the person himself who seeks to vote illegally. Of course, nothing I have said in this opinion affects the right to challenge a person offering to vote, if in fact the person offering to vote is not legally qualified.

I have discussed this matter at great length, but the fundamental question seems to be answered by Section 374, which says that the Board of Registrars are judicial officers and act judicially in all matters pertaining to registration of applicants. The authority and duty is committed to this Board to determine who has the right to register. When they act, they act judicially. When they strike from the list the name of a person, such person is entitled to notice and has a right of appeal. No such notice or right of appeal is provided for such action by the Probate Judge. The qualified elector would be limited only to mandamus and he would have no official notice that his name had been stricken. I cannot believe that the Legislature intended that a person's rights should be carefully protected from arbitrary action by the Board who, by law, are required to hold a hearing and pass upon the matter judicially, and, at the same time, allow another officer to strike such person from such registered list and nullify the action of the Board, even though the Probate Judge has good reason to believe that their action was erroneous.

I, therefore, hold that the Probate Judge is without authority to strike from the list of registered voters a person who has been duly registered by the Board of Registrars and whose name has not been stricken therefrom by the Board of Registrars in the manner provided by law for such action.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 28, 1935

Hon. J. D. Henry, Chairman,
Calhoun County Board of Revenue,
Anniston, Alabama.

Schools — Election for special district three mill school tax cannot be held for a period which overlaps existing three mill county tax.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 19, 1935 in which you state the following facts:

"We have a request from the Calhoun County Board of Education that we order an election to be held in certain school districts of Calhoun County to determine whether or not a special tax shall be levied and collected annually at the rate of 30 cents on each one hundred dollars worth of taxable property, such district tax to be levied and collected for public school purposes and to continue for a period of eleven years from September 30, 1934.

"The County is now levying and collecting a special county wide tax of 30 cents on each one hundred dollars worth of taxable property for public school purposes the said levy expiring September 30, 1935. A renewal of this county wide tax has already been voted to continue for a period of ten years from September 30, 1935.

"There is some doubt on the part of the Board of Revenue as to whether or not the District Tax can be levied for a period of eleven years. You will understand that the period of years that the proposed levy is to continue will run concurrently with one year of the present county wide levy and the ten year levy beginning September 30, 1935."

You request my opinion as to whether or not the Board of Revenue may make an order calling the election for the period of eleven years as stated above.

I am of the opinion that your inquiry should be answered in the negative.

The provisions relative to calling the election for a special district school tax is governed by Article 13, (Sections 261-293) School Code of 1927. Section 262 provides as follows:

"262. When District Tax Cannot Be Levied. — No election in any rural or City school district shall be held for the purpose of levying and collecting a special school tax for school purposes unless the County in which said rural or City district is located shall be levying and collect-

ing special County taxes for school purposes of not less than thirty cents on each one hundred dollars worth of taxable property in such County."

It will be noted that a special district school tax cannot be levied unless the county in which said district is located shall be levying and collecting special county taxes of not less than thirty cents on each one hundred dollars of taxable property in the county.

Another limitation on the special school tax is found in Section 280 which provides that any special tax levied shall not be for a shorter term than two years..

A special district three mill tax voted at any time can never extend beyond the time voted for the county three mill tax. In other words, a district three mill tax can never be levied for a longer time than the county three mill tax has been levied for. — **Biennial Report of Attorney General, 1926-1928**, page 247.

The special district tax for the eleven year period beginning September 30, 1934 would run for a longer period than either the first or second county three mill tax heretofore voted. It would overlap the first county tax ending September 30, 1935 and would start running before the county tax beginning September 30, 1935.

If the eleven year period be considered a one year period from September 30, 1934 to September 30, 1935 and a ten year period from September 30, 1935, to September 30, 1945, the one year period would be in violation of Section 280, *supra*.

Moreover, in my judgment, the special three mill district tax for the eleven year period beginning September 30, 1934 would have a retroactive effect of collecting and levying a tax for a period that has passed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 1, 1935

Hon. Howell Turner,
Secretary of State,
Capitol.

Corporations — "Societies to Foster Trade" organized under Article 22 of Chapter 274 (Sections 7162-7166), Code of Alabama 1923, do not come within the provisions of Sections 6969 and 6975, Code of Alabama 1923.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 21, 1935 in which you request my opinion as to whether or not a corporation organized as a "Society to Foster Trade" under Article 22 of Chapter 274 (Sections 7162-7166), Code of Alabama 1923, must pay charter fees prescribed by Section 6969 and file statement with the Secretary of State and pay the fees under Section 6975.

I am of the opinion that both of your inquiries should be answered in the negative.

This office has repeatedly held that the fees and requirements provided for in Sections 6969 and 6975 are applicable only to corporations of a business character organized under Article 1 of Chapter 274 (Sections 6964-6980) Code of 1923, and not to corporations or associations of a different nature. — **Biennial Report of Attorney General 1920-22**, Pages 417 and 430; **Biennial Report of Attorney General 1930-32**, page 883.

Therefore, the only fees collectible from corporations or associations organized under Article 22 (Sections 7162-7166), *supra*, are those fees specifically set out in said Article. As there are no fees specifically set out in said Article none are changeable. — **Opinions of the Attorney General**, *supra*.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 2, 1935

Hon. Chas. E. McCall,
State Auditor,
Capitol.

An attorney employed by the State or Federal Government to do legal business and who is not engaged in the general practice of law, but gives all his time to the State or Federal Government, is not required to pay the license which is provided by Section 7 of the Act approved July 27, 1927, (General Acts 1927, page 139).

Opinion by Assistant Attorney General Haynes

Dear Sir:

I have your letter of March 8, 1938, in which you request my opinion as follows:

"Please refer to the General Acts of Alabama, 1927, page 163, under Section 7, approved July 22, 1927, and advise whether or not an attorney, a member of the Alabama Bar Association, employed in the legal department of the United States Government, and who is not engaged in

the private practice of law but whose whole time is employed by the Government and devoted to the legal business of the Government, is exempt from taking out an annual license as an attorney.

"Your attention is invited to an opinion of the Attorney General of date July 17, 1928, and found in Biennial Report of the Attorney General 1926-1928, at page 678."

It is my opinion an attorney employed in the legal department of the United States Government, who is not engaged in the private practice of law, is not required to pay the license referred to in your request. You will note, Section 5 of an Act approved July 27, 1927, (General Acts 1927, p. 139) provides as follows:

"Each attorney engaged in the practice of law shall pay, etc. * * *"

I take this to mean, engaged in the general practice, holding himself out to the general public to be employed. It is my opinion this was clearly the intent of the Legislature in the passage of this section, and does not refer to an attorney employed by the State or the Federal Government and whose time is wholly taken up in the discharge of his duties to the State and Federal Government.

Biennial Report of the Attorney General, 1926-1928, page 678; Cooley on Taxation, 3rd Ed. 203.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 4, 1935

Hon. Solomon Baxter,
County Superintendent of Education,
Houston County,
Dothan, Alabama.

Schools — County Board of Education may employ attorney to represent said Board in an injunction suit.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 26, 1935 which reads as follows:

"The Houston County Board of Education in regular session February 22, 1935 called a County-Wide uniform election for the purpose of nominating six persons from which number the Board was to elect three to

serve as trustees of said schools. The Board of Education had failed to call the election according to instructions sent out from the State Department of Education on first Saturday in May, 1934. The Houston County Board of Education had set the term of the trustees elected under the House Bill No. 191 to expire on June 30, 1934. On August 26, 1934, the Board of Education arbitrarily extended the term of office of Trustees chosen under House Bill No. 191 elected the first Saturday in May, 1932, for a period of two years, or until May, 1936. The present Board regarded this extension of term in Houston County as an irregularity and sought to correct it by calling a county-wide uniform election to be held March 23, 1935.

"The Trustees of the Columbia Consolidated School has filed an injunction restraining the Board from holding said election. The Board of Education is in need of counsel.

"What I would like to know is can the Board of Education employ counsel to take charge of this case?"

I am of the opinion that your inquiry should be answered in the affirmative. In an opinion of this office rendered to the State Superintendent of Education on March 14, 1932 (Biennial Report of Attorney General 1930-1932, page 763) it was stated as follows:

"Section 132 of the School Code, 1927 provides that the County Board of Education may sue and contract, which provision, of necessity, involves the liability of being sued. The authority to sue and to be sued, of necessity, carries with it the authority to employ and compensate counsel, when such Board is acting within the scope of its authority, and when counsel for such purposes has not been provided by law.—*Jack vs. Moore*, 66 Ala. 188; Biennial Report Attorney General, 1926-28, page 418.

"However, such agents as boards of education are without authority to employ counsel in cases where counsel may by law be provided, whether by special provision by statute or by implication. The law provides instances where the Board of Education is to be advised by the Attorney General or, by possible implication, by the County Solicitor; also, where the State is a party in interest directly or indirectly the law provides that the Solicitor and Attorney General shall prosecute or defend its interest. In such instances the Board of Education would not be authorized to employ counsel but must avail itself of the counsel provided by law. — Biennial Report Attorney General, 1926-28, page 418, *supra*."

Applying the above to the instant case, it seems that the County Board of Education is authorized to employ counsel. The injunction suit in question is not one in which the State is a party in interest directly or indirectly and consequently need not appear by its Attorney General or Circuit or County Solicitor.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 4, 1935

Hon. A. F. Lee, Sheriff,
Eutaw, Greene County, Ala.

There is no provision of law that will permit the county to pay for a cook who prepares the meals for prisoners. Section 4828, Code of Alabama, 1923, gives the sheriff allowance for preparing meals for prisoners under a certain scale and he can receive no more.

Opinion by Assistant Attorney General Haynes

Dear Sir:

I have your letter of March 15, 1935, in which you request my opinion as follows:

"Kindly advise me as to whether or not the County is required to pay the cook for the state prisoners in jail or if the Sheriff has to pay the cook."

In a recent case by our Supreme Court, *Holcombe v. Mobile County*, 153 So. 638, our Supreme Court held that fuel used for cooking meals for prisoners in the County Jail of Mobile County, could not be paid for by the County. Therefore, it is my opinion if the County cannot pay for fuel used for cooking for prisoners in jail, it cannot pay for a cook who prepares the meals. The sheriffs are paid on a certain scale for feeding prisoners and are paid so much per day for preparing meals under Section 4828 of the Code of Alabama, 1923, and our Court holds this is all the sheriff can be allowed. This section is as follows:

"4828. Allowance to sheriff for preparing and serving food. — There shall be allowed the sheriff for preparing and serving food the additional amount of twenty-five cents a day per capita for each prisoner up to and including five; twenty cents a day per capita for each prisoner in excess of five up to and including ten; and five cents a day per capita for each prisoner in excess of ten up to and including eighty-five, but there shall be no further allowance for any number of prisoners in excess of eighty-five. The minimum allowance to the sheriffs under this section shall be not less than a dollar a day."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 4, 1935

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Probate Judge is entitled to fee of \$1.00 and 15c per hundred words for recording proceedings in adoption cases.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 23, 1935, in which you state:

"Under the Code of 1923 the Probate Judge is allowed a fee of \$1.00 for services in the adoption of a child. The 1931 Act changing the adoption laws does not name the fee to be charged.

"Please advise me if we are to charge the fee of \$1.00 under the old law. Also advise me if the fee of \$1.00 covers the entire charge or should I collect the fee of \$1.00 plus the recording fee of the papers in the case."

While in 1931 Act (Acts 1931, p. 504) is a complete rewrite of Section 9302 of the Code, yet I am of the opinion that your question is answered by Section 7285, setting out fees of the Probate Judge and providing inter alias:

"Service rendered in legitimatizing and adopting children under the provisions of this Code \$1.00."

The fee of \$1.00 is, therefore, collectible.

In answer to your second question I advise that Section 6 of the 1931 Act, provides in part:

"The petition and all decrees in adoption proceedings shall be recorded in a book kept for that purpose and properly indexed."

Section 7285 provides in part:

"Recording * * * orders, decrees * * * and all proceedings required by law to be recorded and not otherwise provided for, for each hundred words15."

It, therefore, appears that the proceedings being required to be recorded the Probate Judge is entitled to recording fees therefor.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 4, 1935

Hon. Edgar Underwood,
Judge of Probate,
Russellville, Franklin County, Ala.

Mutual Cooperative Farming or Trucking Association formed under Article 21, Chapter 274 of the Code, not subject to the charter fees required of general corporations.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 21, 1935, in which you state:

"Please advise me if there is due any Charter Fee, Filing Tax or Examination Fee for filing for record a Declaration of Incorporation under Article 21 of Chapter 274 of the Code of Alabama 1923."

In reply I beg to advise that in my opinion a corporation is not subject to the charter fees provided for general corporations.

Article 21 of Chapter 274 of the Code appears to be an exclusive treatment of the subject.

Moreover, by Section 7161, the property is exempted from "all corporate taxation and licenses" to an amount not exceeding \$5,000.00.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 5, 1935

Hon. Joseph B. Crow,
Tax Collector,
Mobile, Alabama.

Taxes made and maturing before the death of the testator and not paid by him are proper charges against the estate.

Opinion by Assistant Attorney General Howe.

Dear Sir:

I have your letter dated March 28, 1934, wherein you request my opinion as follows:

"During the proper assessing time Mr. Doe makes his assessment for the 1934 taxes. In February 1934 he dies, leaving a will putting all his property EXCEPT ONE PIECE in trust, this one piece being left to another party. During the proper assessing time for 1935 taxes his Executor made an assessment covering the ENTIRE assessment, the same as the 1934 assessment. The executor now wants to pay only on that which is in trust and not on the entire assessment. I have refused to give the executor a bill until the taxes on the one piece have been paid, as this piece was left to a non-resident of the State of Alabama. Please advise if I am right in my contention."

The circumstances detailed in your report indicate that the taxes in question accrued October 1, 1933, during the lifetime of the testator.

Taxes made and maturing before the death of the testator and not paid by him are proper charges against the estate. **Powell v. Labry**, 97 So. 707, 210 Ala. 248; **Howell v. Rutherford**, 43 So. 30, 149 Ala. 661.

I am therefore of the opinion that the assessment should be paid by the Executor of the estate.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 8th, 1935

Hon. W. W. Hill,
Probate Judge of Montgomery County,
Montgomery, Alabama.

1. Probate Judge under Section 408, Code of Alabama, 1923, required to issue absentee ballots not more than thirty days nor less than five days before the Referendum Election to be held on February 26, 1935.

2. A list of qualified voters required to be published by Section 387, Code of Alabama, 1923, can only be published every two years, and under the statute only in the even numbered years.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of January 26, 1935 which is as follows:

"The Legislature having passed an act to submit the question as to whether or not the State Prohibition Laws shall be repealed or modified, to the qualified voters of the State at an election to be held on the 26th day of February 1935, Section 408 of the Code provides that the Judge of Probate, upon application of any qualified voter not more than 30 days nor less than 5 days before any general or Special election to be held in this State, shall deliver or forward immediately upon request to such applicant, etc.

"This election will be held on the 26th day of February, 1935. A person may be a qualified voter on the 29th day of January 1935, and on that date make application for an absentee ballot, and yet on the 2nd day of February, 1935, he will not be a qualified voter for failure to pay his poll tax. In other words, on January 29th, he is qualified to vote an

absentee ballot in the election held on February 26th and on February 2nd he is not a qualified voter, having failed to pay poll tax. The question that I wish to know is, should the Judge of Probate issue absentee votes before February 1st, 1935?

"Again Section 387 provides that the Judge of Probate shall from the registration lists heretofore and hereafter returned to his office, make correct alphabetical lists of all electors registered by precincts, which lists shall be certified by him officially to be a full and correct copy of the list of registered electors, etc. The Judge of Probate shall, after February 2nd compare such official lists with the poll tax lists which have been furnished by the tax collector and from such comparison, said Judge of Probate in some newspaper in general circulation in said county on or before the 15th of April 1922, and of each two years thereafter, and together with said lists there shall also be published a certificate that said list constitutes the correct list of all qualified electors who will be entitled to vote in any election held in said county, etc. And it also provides that this publication of qualified electors shall be made on or before the 1st day of May 1922 and each two years thereafter. The list of voters published by said Judge of Probate on or before the 15th day of April, together with the names added and published on or before the 1st of May, shall be the official list of qualified voters in said county. It will be observed from this section that the Probate Judge can only have said list published every two years, and under the statute only in the even numbered years.

"This publication was made in 1934. I would, therefore, ask the question — by what authority has the Judge of Probate to publish another list before 1936?"

I am of the opinion that under the provisions of Section 408, Code of Alabama, 1923, any person who is a qualified elector at the time when he requests an absentee ballot, if that time be within the dates prescribed by said section, that he is entitled to receive an absentee ballot, even though on the date of the election, the date on which the ballot shall be cast, he is disqualified as a voter. In that event, his ballot is subject to challenge as provided by law. A voter does not cast his ballot on the date on which he applies for an absentee ballot at the office of the Probate Judge and if on that date he is qualified he is entitled to have same delivered to him. However, if he subsequently becomes disqualified through his failure to comply with any of the laws relating to the qualifications of voters, then his ballot should be challenged on the date of the election.

In answer to your second inquiry, I am of the opinion that the list of qualified voters which is required to be published under Section 387 of the Code of Alabama, 1923 as amended by an Act approved August 30, 1927, (General Acts 1927, Page 289), can regularly be published but once every two years and that if the list of voters of this county was last published in 1934 that there can be no regular publication of same until 1936.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1935

Hon. John D. McNeel,
State Comptroller,
Capitol.

Funds — The expenses of the Convict Department must first be met out of funds appropriated to said Department before same can be paid out of the Emergency Fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 14, 1935 in which you state the following facts:

"In the past the Convict Department has refused to approve certain cost bills for various reasons and it now develops that said cost bills should have been paid at the time rendered.

"The Examiner of Accounts has found that said cost bills should have been paid. The State Comptroller contends that said bills should have been paid out of the Convict Fund regardless of what year said bills were rendered for the reason that the Convict Department has an appropriation of \$500,000.00 to be used in case the Convict Department fails to take in enough revenue to cover their operating expenses. The Convict Department contends that said cost bills should be paid out of the Governor's Emergency Fund.

"It has been the practice of the Convict Department in the past to deduct certain amounts from the cost bills, without any authority to do so, or without returning said bills to the Clerk with the request that he explain certain items on said bills. Now it develops on an examination of said Clerk's office by an Examiner of Accounts that the Clerk was entitled to the amount deducted from said cost bills. The Convict Department contends that the amounts erroneously deducted should be paid out of the General Fund."

In view of the above you request my opinion as follows:

"Should not the Convict Department bear all legal expenses of said Department until it is proven that their revenue is exhausted?

"Should not the Convict Department pay out of their funds the amounts shown to be legally due the Clerks on cost bills by an Examiner of Accounts?"

I am of the opinion that both your inquiries should be answered in the affirmative.

The items of the cost bills in question are paid under authority of Section 3667, Code of Alabama, 1923. Said Section specifically provides that the items of costs thereunder **shall be paid out of the Convict Fund.**

Section 14 (2) of the Appropriation Act of 1932 (Acts 1932, page 321) provides as follows:

"There is hereby appropriated to the State Board of Administration for the administration, operation and maintenance of the convict department all receipts from its administration and operation of the convicts; and in addition thereto there is hereby appropriated to the said Board of Administration for such purposes such additional sum as shall be needed for the proper administration, operation and maintenance of the Convict Department not to exceed the sum of Five Hundred Thousand (\$500,000.00) Dollars, in any one fiscal year. Such sums appropriated in addition to the said receipts shall be payable out of the General Fund."

It will be noted that there is appropriated to the Convict Fund \$500,000.00 in addition to its receipts from the administration and operation of the convicts; said \$500,000.00 to be used if necessary by said Department.

In Section 37 (11) there is an appropriation which is known as the "Governor's Emergency Fund". Said Subsection provides as follows:

"For the Governor's Emergency Fund, out of which the Governor may at his discretion pay any part of all of the expenses or appropriation now provided by law, payment of which is not herein otherwise provided for, \$100,000.00 for every year."

It will be noted that this appropriation may be used for expenses or appropriations now authorized by law, **payment of which is not otherwise provided for.**

In dealing with the emergency appropriations and the method of their use in the Budget and Financial Control Act (Acts 1932, page 35), Section 23 thereof provides in part as follows:

" * * * Such allotments shall be for any purpose authorized by law for which no specific appropriation is made or for which inadvertently an insufficient appropriation has been made."

This Section also allows the use of the emergency appropriation in cases **where there is no or insufficient appropriation.**

In the instant case, in my opinion, the Convict Department would have to exhaust its appropriation; that is, the receipts of the Department, plus the \$500,000.00 as provided for in the Appropriation Act, *supra*, before any expenses of the said Department can be paid out of the Emergency Fund. It appears from the above that it is the clear legislative intent for the Convict Department to operate on its receipts and if extra money was needed to draw on its \$500,000.00 appropriation. When both of these sources were exhausted,

then the Governor may at his discretion supplement any discrepancy out of the Emergency Fund. It is unquestionable that the cost bills in question are a charge upon the Convict Fund and must be paid therefrom.

The disbursement of state funds is ordinarily regulated by the constitution or by statute and may be made only in the manner and upon the conditions thereby prescribed. Before a State Treasurer has power or may be required to pay out money from the treasury there must usually be not only a specific appropriation made by law but also a proper warrant or order from the State Auditor or other proper officer. — 59 *Corpus Juris* 230.

Where a special fund is created or set aside by statute for a particular purpose, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside and not diverted to any other purpose or transferred from such authorized fund to any other fund. — *Purifoy vs. Andrews*, 101 Ala. 643, 16 So. 541; *Hall vs. Blan*, 227 Ala. 64, 148 So. 601. Moreover, money cannot be lawfully transferred from the General Fund to a separate or specific fund except as may be authorized by statute. — 59 *Corpus Juris* 232.

The fact that the cost bills in question were not approved at the time they were rendered and the fact that certain items were illegally deducted from said cost bills would not affect the above.

It is questionable as to which fiscal year the cost bills in question should be charged. In my judgment they would become a charge upon the fiscal year in which they were audited and approved. Until same are audited and approved they would not become legal charges against the Convict Fund.

Even assuming that they would be charges of the fiscal year in which they were presented, they would nevertheless be payable out of the Convict Fund if there be a surplus in said fund after meeting all current expenses of the fiscal year out of which payment is sought.

In an opinion of this office rendered to the State Comptroller on July 14, 1933, in dealing with the payment of expenses or obligations incurred during past fiscal years, it was stated: "In view of the provisions of the Budget and Financial Control Act, and the recent decision of the Supreme Court in the case of *Hall v. Blan*, 227 Ala. 64, 148 So. 601, the current revenues of a fiscal year must first be applied to the current expenditures of that fiscal year. In other words, current expenditures must first be met before past due indebtedness or parts thereof may be paid. But I see no objections to applying the surplus of any fiscal year, after all expenditures of that fiscal year have been paid, to the retirement of valid indebtedness incurred during a previous fiscal year or years."

From the above it follows that cost bills, even if they be considered obligations of past fiscal years, may be paid out of a present fiscal year's revenue provided the fund out of which payment is to be made is sufficient to pay same after all current expenses first have been met. — *Opinion of the Attorney General to the State Comptroller, July 17, 1933.*

The premises considered, I am of the opinion that the cost bills, legally chargeable to the Convict Fund, should be paid out of the appropriation to the Convict Fund until it is proven that the revenue from said appropriation is exhausted. Then, and not until then, can said cost bills be made a charge upon the Governor's Emergency Fund. This is true regardless of whether the cost bills in question be considered a charge against a past fiscal year or the present fiscal year.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1935

Hon. Wm. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

The privilege or license tax provided by Section 21½ of Act No. 163, approved July 22, 1927, applies to the filing for record of the transfer of mortgages made to the Federal Joint Stock Land Banks.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter with reference to the filing tax on the transfer of a mortgage executed to The First Joint Stock Land Bank of Montgomery. You enclosed a copy of this instrument in which it is shown that in addition to the transfer of the debt the real estate is quitclaimed to the transferee.

I call your attention to an opinion rendered to Hon. J. P. Beebe, Bay Minette, Alabama, construing the transfer of a mortgage executed to the Federal Land Bank of New Orleans, under date of April 28, 1932 (Biennial Report 1930-1932, p. 803).

In my judgment the reasoning in this opinion applies with full force to transfers by the First Joint Stock Land Bank, and unless it be affirmatively shown that the mortgage tax was paid on the original mortgage to The First Joint Stock Land Bank, the transfer is liable for the filing tax levied by Section 21½ of Act No. 163, approved July 22, 1927.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1935

Hon. Grady R. Williams,
Judge of Probate,
Lauderdale County,
Florence, Alabama.

Coroners — Before they can make an investigation of a death, must procure affidavits of witnesses, present same to a judge of a court of record or to the solicitor and receive an order to make such investigation. Justice of the Peace, under Section 4570, Code of Alabama, 1923, may, under certain circumstances and conditions, make such investigation, but in doing so he is bound by the rules, regulations and law that are applicable to coroners.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 19, 1935, in which you request my opinion as follows:

"Please advise me if the Court of County Commissioners may exercise its discretion and pay for a coroner's inquest held by a Justice of the Peace of the county, without having first been ordered, as directed in Section No. 3752 of the Code of 1923. It seems that the inquest was held over a citizen who died in a very out-of-the-way section where no telephones were available and since there were suspicious circumstances surrounding his death the Justice of the Peace conceived it to be his duty to hold the same. Not being able to get in touch with the Solicitor and time being pressing, he proceeded to hold the inquest without an order. There is a statement on file with the coroner's claim, given by the Circuit Solicitor to the effect that the Magistrate acted very wisely in the case and, as a result of his inquest the County was saved considerable cost in that a grand jury investigation was thereby avoided.

"Both the Circuit Solicitor and the Court of County Commissioners wish the costs of the inquest to be paid, the total amount of which is \$29.45. Being in doubt, however, as to our authority to pay it the Commission has asked me to seek your opinion."

In answering your inquiry above, I call your attention to Section 4557, Code of Alabama, 1923, which is as follows:

"4557. Process of holding coroner's inquest; jury of inquest summoned by coroner. — When a coroner has been informed that a person has been killed, or suddenly died under such circumstances as to afford a reasonable ground for belief that such death has been occasioned by the act of another by unlawful means, he must forthwith make inquiry of the facts and circumstances of such death by taking the sworn statement in writing of the witnesses having personal knowledge thereof, and submit the same to a judge of a court of record or a solicitor; and if, upon such preliminary inquiry the judge or solicitor is satisfied from the evidence that there are reasonable grounds for believing that such death has been occasioned by the act of another, by unlawful means, he must direct the

coroner to forthwith summon a jury of six discreet householders of the county to appear before him forthwith at a specified place and inquire into the cause of such death, but no person shall be liable to serve as a juror more than one time during any one year, and no person shall be paid compensation for services as a juror on more than one inquest during any one year."

I do not find where this section has been amended, therefore, its provisions as they appear in the Code must be followed, and the presentment of the case by affidavits must be made to some judge of a court of record or solicitor, and if the judge or solicitor is satisfied from the evidence that there is reasonable grounds for believing that such death has been occasioned by the act of another, by unlawful means, he must direct the coroner to forthwith summon a jury, etc. It is true that in this case the investigation was made by a justice of the peace under Section 4570, Code of Alabama, 1923, which is as follows:

"4570. When inquest held by justice of the peace; fees. — If the coroner is absent from the county, or is unable to act, any justice of the peace may hold an inquest on the body and any deceased person, under the rules and regulations in this chapter prescribed; and is entitled to the same compensation for his services that is by law allowed to the coroner."

You will observe from the above quoted section, that when a justice of the peace acts under the above statute, he is bound by the same law and must act under the same rules and regulations as the coroner in making such examination.

Therefore, it is my opinion that the justice of peace in making such investigation must, as a preliminary matter, present his case to a judge of a court of record or to the solicitor and receive his order to make the investigation.

Opinion of Attorney General, Book 2, (Office Edition) p. 187.

I realize that my holding here at times may work an inconvenience, but there is no other provision of law whereby a justice of the peace can hold an inquest except the general provision quoted above. Fees and costs are penal in their nature and the provisions of the law must be strictly followed. See Section 3734, Code of Alabama, 1923, which is as follows:

"3734. No fee charged unless expressly authorized. — The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."
42 Ala. 514; 55 Ala. 133.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

April 11, 1935

Hon. Saxon P. Poyner,
Judge of Probate, Houston County,
Dothan, Alabama.

1. All claims against the county must be presented for payment within twelve months after accrual, unless it be a claim of a minor or lunatic, who may present such claim within twelve months after removal of such disabilities.

2. If claim be presented within twelve months and no action is taken on same for six years, such claim would be barred by the statute of limitations under subsection 5 of Section 8944, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 2nd, in which you request my opinion as follows:

"I wish to have your opinion on whether the Court of County Commissioners can legally pass and pay a claim made as follows: Mr. Roy O. Hill, clerk of the Circuit Court receives \$500.00 per year as ex-officio fees paid by the Court of County Commissioners out of the general funds of the county. Requisition or claim is made for this quarterly in the sum of \$125.00 per quarter.

"The auditor now in his office brings to light the fact that he failed to receive payment for one quarter of the year 1928. Mr. Hill will make affidavit that he presented his claim in due form at the time and that said was never paid. Question — can the Court of County Commissioners now legally pay that claim supported by the affidavit mentioned?"

All claims against a county must be presented for payment within twelve months after their accrual, unless such claim is in favor of a minor lunatic, who may present such claim within twelve months after the removal of such disability. See Section 228, Code of Alabama, 1923, which is as follows:

"All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

It is my opinion under Section 5680, Code of Alabama, 1923, proof of presentation may be made by oral testimony. Said Section is as follows:

"Suit must not be brought against a county until the claim has been presented to the court of county commissioners, and disallowed or reduced by the court, and the reductions refused by the claimant. The failure or refusal of the court to enter upon its minutes the disallowance or reduction of the claim for ninety days is a disallowance. Proof of the fact of presentation of such claim to such court of county commissioners may be made by parol evidence."

You will note from the above, if the Court refuses to allow such claim or to reduce it to a less amount by an order spread upon the minutes, for ninety days, this is a disallowance of such claim. I notice you say this claim originated in 1928. This being true, it is my opinion, the claim is barred by the statute of limitation of six years, under Section 8941 and subsection 5 of Section 8944, which is as follows:

"Actions for the recovery of money upon a loan, upon a stated or liquidated account, or for arrears of rent due upon a parol demise."

106 Ala. 381, (17 So. 709).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 12, 1935

Mrs. Mary M. Crook,
Clerk, Board of Revenue,
Evergreen, Conecuh County, Ala.

Court of County Commissioners is authorized under Section 6755 subsection 2, to furnish individual drinking cups for the various offices of the county.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of March 29, 1935, in which you request my opinion as follows:

"In the past, drinking cups for the Courthouse have been furnished by the Judge of Probate out of personal funds. I would like to know if there is any provision made whereby this item can be paid for out of the General Funds of the County, and if so, whether preferred or non-preferred claim. Have been told that some counties furnish drinking cups out of the General Fund, as coming under office supplies."

Under Section 6755, Code of Alabama, 1923, subsection 2, we have the following:

"It shall be the duty of the court to provide a janitor for the courthouse and to see that the janitor keeps clean and in a sanitary condition all the courtrooms, corridors, halls and offices in the courthouses of their respective counties."

I am of the opinion that this is sufficient authority to authorize the Court of County Commissioners to pay for drinking cups. Note the words: "Keep clean and sanitary." It is my opinion the furnishing of individual drinking cups for the various offices of the county is a sanitary practice and would be authorized under the section quoted above.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 12, 1935

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Probate Judge cannot be custodian of funds of minor or person of unsound mind where such funds are in excess of two hundred dollars.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 18th in which you state:

"There has been paid into this Court by the Administrator of an estate a sum of money for a minor, and there is paid the Probate Judge each month a small amount from the U. S. Veterans Administration for this minor. Both of these amounts together amount to more than \$200.00. Please advise me if the Probate Judge can legally pay this money under Section 8251 of the Code of 1923 for the maintenance of the minor."

In reply I call your attention to Sections 8250 and 8251 of the Code providing:

"The judge of probate is incompetent during his term of office, to act as guardian of any minor, or person of unsound mind, residing in his county, but may be custodian of the funds, of a minor, not having a guardian, as is authorized in this article."

"The funds of a minor or person of unsound mind, not having a general guardian, not exceeding in amount two hundred dollars, may be paid to the judge of probate of the county in which said minor or person of unsound mind resides, if a resident of the state, or if a nonresident,

to the judge of probate of the county in which the creditor resides; and the person from whom said sum is due may discharge himself by making such payment."

It appears that the probate judge cannot be a guardian, but can be custodian of funds of a minor or person of unsound mind, not having a general guardian, "not exceeding two hundred dollars."

As you state the amount is in excess of two hundred dollars, it would seem necessary to have a guardian appointed or deliver the money to the general guardian of the county.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 12, 1935

Hon. L. W. Price,
Judge of Probate,
Evergreen, Conecuh County, Alabama.

There is no authority to issue license to sell cigarettes to a peddler, such license being issuable for a "fixed location."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I am advised by an employee of the State Tax Commission that a Probate Judge cannot legally issue a privilege license to sell cigarettes by a peddler who has obtained a license to peddle in a vehicle. I cannot find any Section of the law prohibiting the sale of a cigarette license to a rolling store, and I consider a rolling store an established place of business, the same as any other store.

"Will you please render an opinion as follows:

"No. 1. May a Probate Judge legally sell a privilege license to an operator of a peddler's vehicle or rolling store, to sell cigarettes, cigarette tobacco, etc., if the peddler has purchased a privilege to peddle from a vehicle in addition to the privilege license to sell cigarettes?

"No. 2. If a person is granted a peddler's license without cost because of a disability, may he sell cigarettes from a vehicle without purchase of a cigarette license?

"No. 3. If your reply to question No. 2 is in the negative, may a person who has been granted exemption from payment of peddler's license because of disability and who peddles from a vehicle, purchase a license to sell cigarettes from such vehicle?"

In reply beg to advise that no license can be issued to a peddler to sell cigarettes. Such license must be issued for a **fixed** location.

Section 363, Acts 1919, p. 282.

I am enclosing opinion to D. R. Boyd, County Solicitor, Randolph County, dated November 25, 1932, (Office Edition, Book 12, p. 112).

This renders unnecessary an answer to questions 2 and 3.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 15, 1935

Hon. E. L. Hurst,
Judge of Probate,
Etowah County,
Gadsden, Alabama.

County governing body cannot legally pay persons who serve as members of canvassing board under Section 510 of the Code of Alabama, 1923.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of March 6, 1935, which is as follows:

"Due to the fact that the Sheriff, Circuit Clerk and myself were all candidates for election in the November general election of last year, the Register in Chancery of the Circuit Court appointed three persons to serve as the appointing board. This appointing board appointed three other persons, under Section 510 of the Code of 1923, to canvass the election and certify the returns thereof to the proper authorities. These three persons, appointed to serve as the canvassing board or board of supervisors, consumed two days in tabulating the election returns and certifying the results. They have received no compensation from any one for their services, but they have filed a claim with the County Board of Revenue for their services in the election claiming the amount of \$10.00 each. The Board of Revenue has withheld the payment of these

claims until an opinion from your office is received authorizing their payment."

Section 510, Code of Alabama, 1923, which section is hereafter set out, provides for the appointment of persons to canvass the election and certify returns thereof to the proper authorities under certain circumstances. This section, however, does not provide for the payment of those persons for the services rendered by them. Such is a legislative function and, while I am of the opinion that those persons so serving should be compensated, I do not know of any authority of law whereby they can be paid.

"Section 510. Canvassing votes after an election; time and manner of. — Friday next after the election at the hour of twelve meridian, the returning officer of the county, in person or by deputy, and the judge of probate and the clerk of the circuit court shall assemble at the courthouse; and if there is no such judge or clerk, or if either of them fails to attend, or if either of them is interested by reason of having been a candidate at such election, his place must be supplied by a respectable freeholder or householder of the county, appointed by the board hereinafter provided for the appointing of the inspectors in the various precincts for said election, at the time of appointing the election inspectors, and if said appointing board fail to provide for such member or members, or if any member or members as herein provided should fail to attend at the time and place herein mentioned, the returning officer shall supply such deficiency by a respectable freeholder or householder of the county who is a qualified elector; and if all such officers are of the same political party, then the returning officer of the county must summon three reputable persons resident householders or freeholders of the county, members of the opposite political party who are qualified electors, to attend at such time and place; and in the presence of such other persons as choose to attend, the board shall make a correct statement from the returns of the votes from the several precincts of the county of the whole number of votes given therein for each officer, and the person to whom such votes were given."

I am herewith enclosing a copy of an opinion rendered by this office on May 22, 1934, to Hon. E. H. Persons, Attorney at Law, Huntsville, Alabama, which opinion deals with a question closely related to the one at hand.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 15, 1935

Hon. F. B. Thompson,
Judge of Probate,
Clay County,
Ashland, Alabama.

Counties — Liable for purchase of cook stove used in cooking food for prisoners in county jail but not liable for wood and coal used.

Counties — Liable for payment of washing bedding used in county jail.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 23, 1935 in which you request my opinion as follows:

1. Is the county liable for payment of a bill filed by the sheriff for a cook stove to be used in cooking the food with which to feed the prisoners in the county jail?
2. Is the county liable for payment of a bill filed by the sheriff for wood or coal used in cooking and preparing the food for the prisoners in the county jail?
3. Is the county liable for payment of the expense incurred by the sheriff in washing of bedding used in the county jail?

You ask these inquiries in view of the recent decision of the Supreme Court in the case of **Holcombe vs. Mobile County**, 155 So. 641, which holds that the county is not liable for fuel used in cooking prisoners' food in a county jail.

I am of the opinion that your first inquiry should be answered in the affirmative. Section 4878, Code of Alabama, 1923 provides as follows:

"4878. Expense of maintenance, etc., how paid. — The expense incident to the construction, maintenance, sanitation, healthfulness and hygiene of each county jail, prison, and almshouse in this state shall be paid out of the funds of the county in which such institution is located and of the town or city, if the institution be a town or city institution."

In construing said Section the Supreme Court in the case of **Holcombe vs. Mobile County**, 155 So. 641, held that the term "maintenance" applied to the jail and its equipment. A cook stove to be used in cooking the food with which to feed the prisoners in the county jail is, in my opinion, such equipment of the jail as to come within the contemplation of this Section. — **Biennial Report of Attorney General, 1926-1928**, pages 171, 201.

I am of the opinion that your second inquiry should be answered in the negative. This point was specifically decided in the case of **Holcombe vs. Mobile County**, supra, in which it was held that Section 4878, supra, does not include fuel to cook prisoners' food, but extends only to the maintenance and equipment of the county jail.

I am of the opinion that your third inquiry should be answered in the affirmative. Under Section 4866, Code of Alabama, 1923, the county is required to furnish clean and sufficient bedding to the prisoners. See also

Section 221, Code of Alabama, 1923. — **Biennial Report of Attorney General, 1930-1932, page 61.**

All former opinions of this office relative to the liability of the county for furnishing fuel to cook prisoners' food, being in conflict with the above, are hereby overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 15, 1935

Hon. Frank O. Deese,
Judge of Probate, Dale County,
Ozark, Alabama.

Depositories — Courts of County Commissioners may designate more than one depository for the County Treasurer under the provisions of Act No. 60, House Bill 366, approved March 10, 1933 (General Acts 1933, p. 51.)

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter in which you state that the Dothan Bank and Trust Company is the regular bonded depository for the County Treasurer of Dale County. In order to better accommodate the public, and to save exchange on county checks, the County Treasurer has asked the Commissioners Court to authorize the use by him of the Bank of Ozark as an additional depository under provisions of Act No. 60, House Bill 366, (General Acts 1933, p. 51).

In view of the above, you request my opinion as to whether or not under the above cited Act the Court of Commissioners would be authorized to designate this additional depository, and if so, would the authorization of same annul the former one.

In answer to your inquiry, I am of the opinion that the Court of County Commissioners may designate more than one depository for the use of the County Treasurer and that consequently the appointment of the second depository would not annul the appointment of the first.

The construction of this statute depends upon the meaning to be given the indefinite article "a".

The cases seem to uniformly hold that the indefinite article "a" may sometime mean one, or it may mean one of a number, depending upon the context. — *Deutch v. Mortgage Securities Co.*, 123 N. E. 793, 96 W. Va. 676.

I call to your attention, however, the case of *Bourland v. First National Bank Bldg. Co.*, 237 S. W. 691, 152 Ark. 139, which deals with the exact question at hand and which holds that the indefinite article "a" as used in a similar statute was not a limitation upon the power of the Court of County Commissioners to designate depositories. I quote from the above styled case.

"Under Acts of 1913, pp. 79, 83, Sec. 21, 24, providing for the designation of a **depository** for city funds and for the funds of improvement districts therein and requiring all funds to be deposited therein when 'a' city depository is selected, the city is not limited to a single bank as a depository, notwithstanding the article 'a' which is a word of vague meaning and too indefinite to limit the number of depositories."

The following cases are also authority for the position taken by the Supreme Court of Arkansas in the *Bourland* case, *supra*.

City of St. Louis v. Handlen, 145 S. W. 421, 242 Mo. 88;

National Union Bank v. Copeland, 4 N. W. 794, 141 Mass. 757;

Thompson v. Stewart, 14 N. W. 247, 60 Iowa 225;

Commonwealth v. Wetzel, 8 S. W. 123, 84 Ky. 537;

Maynahon v. City of N. Y., 98 N. E. 482, 205 N. Y. 181.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 16, 1935

Hon. J. M. Gray, Chairman,
Walker County Commission,
Jasper, Alabama.

County Commission has no authority to grant extra compensation, after contract made or work done, to employee of county for the work contemplated in the original contract of employment.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter dated April 6, 1935 requesting opinion as follows:

"Mr. Britton made County Commissioners a verbal proposition that he would do the necessary engineering work necessary for application

to PWA for loan and grant and complete job of engineering on such projects for 4% of the amount paid to Contractor for completion of any job let. The County Commission accepted his offer as evidenced by resolution of July 25th, 1934 a copy of which is enclosed.

"On December 12, 1934 a new resolution was passed to pay Mr. L. C. Britton an additional 2% above his contract price 4% agreed to July 25th, 1934 Copy of resolution enclosed.

"I refused to pay claim of additional 2% on the grounds that it violates Section 68 of the Constitution and also that he has not made a bond as required by the highway act 1927 section 168 page 394 see resolution enclosed dated Dec. 3rd and 17th, 1934."

From the facts stated in your request, I understand that the additional 2% is compensation for services of Mr. Britton, which services were contemplated by the parties at the time of his original employment. Upon this statement of facts, I am of the opinion that the County Commission was without authority to grant to Mr. Britton the 2% addition compensation, as undertaken by the resolution adopted December 12, 1934. **Constitution of Alabama, Section 68 Montgomery County vs. New Farley National Bank, 200 Ala. 170, 75 So. 918; S. C. 203 Ala. 654, 84 So. 815.**

The rule as stated by the court in the Montgomery County case, supra: is:

"There is nothing in the Constitution or in any principle of the common law prohibiting the county authority, pending the execution of any contract with the county, from modifying, remitting or abating something that its debtor or contractor was to pay or do, such action being taken in good faith upon a new and valuable consideration moving to the County."

In my opinion a contract for the services is not such contract as is contemplated by the Acts of 1927, page 394, Section 168, Code of Alabama 1928, Section 1397 (30); and, therefore, no bond for "faithful performance" is required.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 16, 1935

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Phenix City, Ala.

Probate Judge is not required to collect charter fee from Federal Saving and Loan Association.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 8 in which you state:

"I have a charter filed in this office for record, which is as follows: First Federal Savings and Loan Association of Russell County. The object of said association is to promote thrift and home ownership by providing a convenient and safe method for local citizens and others to save and invest money, and by providing for the sound and economical financing of homes.

"Please advise me whether there will be a charter fee collected. Thanking you to advise me and I trust that I will not be so much trouble to you."

In reply, I beg to advise that Section H Act June 13, 1933 C. 64 P. 5, 48 Stat. 132 (12 U. S. C. A. 1464 (h)) provides as follows:

"Such associations, including their franchises, capital, reserves and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations of their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

It, therefore, appears that such associations are subject to the same fees and taxes as are Alabama Associations.

The Building and Loan Act of 1931 (Acts 1931, p. 218) in providing for the formation of associations omits entirely the provision of Section 2 of the 1927 Act (Acts 1927 P. 431) providing for a charter fee to be paid the Probate Judge, but provides apparently in lieu thereof certain fees to be paid the Building and Loan Commissioner.

It is, therefore, my opinion that you are not required to collect a charter fee.

This likewise answers your letter of April 2.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 16, 1935

Hon. Charles W. Lee,
State Comptroller,
Capitol.

State Warrant refunding bonds cannot be accepted in lieu of money as payment of demands due to the State.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated April 3, 1935.

You inquire if the State Comptroller can legally accept in payment of a debt or demand due to the State by a Circuit Clerk, five percent Warrant Refunding Bonds issued by the State.

The question must be answered in the negative.

Public revenues must be paid in money unless some other medium of payment is specifically authorized by law. *Burke v. Armstrong*, 52 Ala. 48. *City of Enterprise v. Rawls*, 204 Ala. 528, 86 So. 374. *Wadsworth v. State*, 225 Ala. 118, 142 So. 529.

I find no authority providing for the acceptance of five percent Warrant Refunding Bonds as payment of demands due the State.

The fact that the Circuit Clerk was not under bond at the time of the accrual of the charges constituting the State's claim does not alter the situation. See Code Section 5645.

Of course, the proceeds of the Warrant Refunding Bonds, when sold, may be applied to the demand due the State by the Circuit Clerk.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 16, 1935

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Statutes — Local act establishing separate stock districts would be unconstitutional in violation of Section 104 (23), Constitution of Alabama, 1901.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 6th, 1935 in which you state that the Government has established in your county the Cumberland Mountain Rural Rehabilitation Community on Cumberland Mountain. They have acquired eleven thousand acres of land in what is known as Sanders Precinct No. 22. They have not a stock law in this precinct and the Government does not want to fence these farms that are being cleared for the homesteaders, and they cannot have a stock law election in said precinct before July or sometime thereafter.

You request my opinion as to whether or not a local act of the Legislature establishing a stock law in this precinct would be legal.

I am of the opinion that your inquiry should be answered in the negative.

Such a local act is manifestly prohibited by Section 104 (23), Constitution of 1901, which forbids the creation of stock law districts by special or local acts; and such an act would be null and void. — **State vs. Williams**, 18 Ala. App. 513, 93 So. 361. See **Benedict vs. Board**, 177 Ala. 52, 58 So. 306.

The proper way to establish stock law districts would be to comply with the provisions of Chapter 345 (Sections 10207 - 10225), Code of Alabama, 1923. Establishment of law districts under the provisions of this Chapter is a valid exercise of the police power and is not violative of the due process of law clause of the State and Federal Constitutions. — **Edwards vs. Bibb County Board**, 193 Ala. 554, 96 So. 449; **George vs. Board**, 207 Ala. 227, 92 So. 269.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 19, 1935

Hon. Robert Hudson,
Superintendent of Education,
Colbert County,
Tuscumbia, Alabama.

Schools — County Board of Education cannot pay interest on warrants after maturity unless warrants so specify.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 11, 1935 in which you state that the Colbert County Board of Education has had funds tied up in the Tennessee Valley

Bank since the bank holiday. These funds were to be used in liquidating warrants legally issued by the County Board of Education. These warrants matured some time ago and since that time interest has been accruing on them.

You request my opinion as to whether or not the Board will have the legal right to pay interest after final maturity of the warrants when the funds in the bank are released.

I am of the opinion that your inquiry should be answered in the negative, unless the warrants in question specifically provide for the payment of interest after maturity and/or until paid.

It is true that the County Boards of Education may issue warrants for legal purposes and provide for the payment of interest thereon. — **Kimmons v. Jefferson County Board of Education**, 204 Ala. 384, 85, So. 774. However, only the interest specifically authorized may be paid.

The failure to pay the warrants in question on maturity was due to no fault of the County Board of Education. The money was in the hands of the County Treasurer of School Funds and he was responsible for their payment. In other words, the failure to pay at maturity was the default of the County Treasurer of School Funds and not the County Board of Education. The interest after maturity does not accrue against the County Board (unless so provided in the warrants), but against the County Treasurer of School Funds. — See **Hasty v. Marengo County Bank**, 206 Ala. 280, 89 So. 423; **Vincent v. Gilmer's Ex'r.**, 51 Ala. 387.

From the above it follows that if the warrants were silent as to the payment of interest after maturity, the County Treasurer of School Funds would be liable for same and not the County Board of Education. On the other hand, if the warrants contained a proviso that interest should be paid after maturity and/or until paid, the County Board of Education would be liable for said interest.

If the warrants were silent as to the rate of interest after maturity, they would bear the legal rate after that time. This is true notwithstanding the contract rate before maturity. — **Davis v. Anderson**, 224 Ala. 400, 140 So. 423; **Alge-Sullivan Lbr. Co. v Union Trust Co.**, 218 Ala. 448, 118 So. 760. This rule is applicable regardless of who is liable for the interest after maturity.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 27, 1935

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Sheriffs are not entitled to the fee or reward provided for by Section 4657 of the Code of Alabama, 1923, as amended by Act ap-

proved April 20, 1933, until the party charged has been convicted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 9, 1935, in which you request my opinion as follows:

"Kindly advise me your opinion on the following: Is the sheriff entitled to a seizure fee and mileage in a case involving violation of the prohibition law where such case is nolle prossed. And has this been true since the passage of the Act in the Code of 1923, Section 4039."

I assume you are referring to the fees provided for by Section 4659, Code of 1923, which was amended by an Act approved April 20, 1933 (General Acts 1933, p. 200). My answer is in the negative.

As you will note, this Act provides that only those fees can be charged after conviction. It is more in the nature of a reward rather than a fee and becomes payable on conviction. The Act in part reads as follows:

"Section 1. When any person is convicted of violating the prohibition laws under Section 4656 and 4657, Article Three, Chapter 167, of the Criminal Code of Alabama, 1923, there shall be charged * * * ."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 27, 1935

Hon. H. H. Houk,
Chief Engineer,
Highway Department,
Capitol.

Highways — Right of entry of condemnor pending appeal in condemnation proceedings is governed by Section 162 of the Highway Code of 1927 (Acts 1927, page 393).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 8, 1935 from which the following facts appear:

U. S. Public Works Project No. NRH 188 includes a section of U. S. Highway 80 through the Tombigbee River bottom for which the property owner donated a right of way some 200 feet in width when the relief bridges were built and the approach embankments constructed in 1927, 1928 and 1929.

Marengo County was recently asked to secure additional widths of right of way to widen the embankments and flatten the slopes in the interest of safety, improve the side drainage, and prepare and pave the embankment, which the County Board did by condemnation and a contract for the work was made.

The property owner now announces that he will appeal from the order of condemnation by the Probate Court within the thirty-day limit on the ground that neither the State nor the County has the right to obtain additional right of way after a highway has once been built.

You request my opinion as to whether or not the Highway Commission would be justified in ordering its contractor to proceed with the work or should it order the contractor to suspend the work pending the court decision on such an appeal.

I am of the opinion that the answer to your inquiry is governed by Section 1352, Code of Alabama of 1923, which is brought forward as Section 162 of the Highway Code of 1927 (Acts 1927, page 393). Said Section provides as follows:

"Section 162. **RIGHT OF EMINENT DOMAIN TO COMMISSIONER'S COURTS; APPEAL.** The boards of revenue, courts of county commissioners, or other like governing body of the several counties of the state are given the right of eminent domain for the purpose of establishing and changing public roads, bridges and ferries in their respective counties, except in cases where the State Highway Commission has jurisdiction over such highways. When an appeal is taken from any assessment in a condemnation proceeding brought by a county, such appeal shall not deprive the county obtaining judgment of condemnation of a right of entry for any and all purposes named in the condemnation proceeding provided the amount of damages assessed shall have paid into court in money, and a bond shall have been given in not less than double the amount of damages assessed, with good and sufficient sureties to be approved by the clerk of the court to which the appeal is taken, conditioned to pay such damages as the owner of the property may sustain."

The rights of way for state road projects are acquired by the county for the use of the state under Section 31 of the Highway Code of 1927 (Acts 1927, Page 358). (See opinion of the Attorney General to Right-of-Way Agent of the Highway Department rendered on April 1, 1935). The county, exercising its right of eminent domain, acquires such rights of way through condemnation proceedings instituted under the provisions of Article 1 of Chapter 286 (Section 7476-7506), Code of Alabama of 1923. After the necessary preliminary steps in such proceedings the commission appointed under Section 7486 makes its report to the Probate Court, which in turn makes the order of condemnation under Section 7491. A right of appeal then lies to

the Circuit Court where the case is tried de novo under Section 7492. Appeal then lies to the Supreme Court under the order of the Circuit Court under Sections 7496, 7497 and 7498.

In discussing the right of entry of the condemnor pending appeal our Supreme Court in the case of **Southern Ry. Co. vs. Birmingham, etc. R. Co.**, 130 Ala. 660, 31 So. 509, state:

"Statutes permitting the party condemning to take possession pending an appeal by either party, upon making a deposit of the damages awarded, are uniformly upheld by the courts. But in the absence of a statute permitting it, the party cannot obtain the right to possession pending an appeal by tendering or depositing the damages awarded."

The right of the condemnor to take possession, pending an appeal, in highway condemnations by counties is specifically authorized by Section 162 of the Alabama Highway Code of 1927, above quoted. The right of the condemnor to take possession in condemnation proceedings in general, pending appeal, is specifically given by Sections 7498 and 7499. Said Sections provide as follows:

"7498. Judgment not suspended by appeal if damages paid into court and bond given. — No appeal shall suspend the judgment, or deprive the applicant of the right of entry, provided the amount of the damages assessed for the parties who appeal or against whom the appeal is taken, shall have been paid into court in money, and a bond shall have been given in double the amount of such damage, with good and sufficient sureties, to pay such damages as the property owners may sustain."

"7499. Order of condemnation; effect of appeal. — The order of condemnation upon the payment of the sum ascertained and assessed by the verdict of the jury, or the deposit thereof in court for the defendant, shall vest in the applicant the easement proposed to be acquired for the uses and purposes stated in the application and for no other uses or purposes. But if an application shall be taken by any party, then the person, corporation, or association seeking to acquire such right of way, upon the deposit in the court for the party whose land or interest therein is sought to be condemned, of the amount of damages and compensation so assessed, together with the costs of the proceeding, shall be entitled to enter upon the lands so condemned, and survey, construct, and operate on the same for the uses and purposes stated in the application; but such easement shall not vest absolutely in such person, corporation, or association, until the final determination of the cause and the payment or deposit in court of such damages and compensation as shall then be adjudged."

Our Supreme Court recognizes that these Sections give the condemnor the right of entry and possession pending appeal for the exclusive purposes of the condemnation, provided the condemnor fulfills the conditions required as to paying the award into court and the posting of the necessary bond. — **Southern Ry. Co. vs. Birmingham, Etc., R. Co.**, supra; **Alabama Power Co. vs. Keystone Lime Co.**, 191 Ala. 58, 67 So. 833; **Smith vs. Jeffcoat**, 196 Ala. 96, 71 So. 717; **Alabama Power Co. vs. Hersfeld**, 216 Ala. 671, 114 So. 49;

Jefferson County vs. City of Birmingham, 217 Ala. 268, 115 So. 422; **State vs. Williams**, 222 Ala. 274, 132 So. 321.

However, it is plain by Section 7493 that payment of the award is a condition to an appeal only if the petitioner wishes to enter upon the land during its pendency. In other words, the order of condemnation, on which the appeal is based, need not be delayed until after compensation is paid. The payment of the award and the execution of the bond being necessary only in the event the condemnor wishes to avail himself of his right of entry and possession. — *State vs. Williams*, *supra*; *Jefferson County vs. City of Birmingham*, *supra*.

It will be noted from the above that the right of entry pending appeal in highway condemnations by counties is governed by Section 162 of the Highway Code of 1927, *supra*. The right of entry pending appeal in condemnation proceedings in general is governed by Section 7493, *supra*. The right of entry pending appeal from the Circuit Court to the Supreme Court in condemnation proceedings in general is governed by Section 7499. Special provisions relating to specific subjects control over general provisions relating to the general subjects. — *Herring vs. Griffin*, 211 Ala. 225, 100 So. 202. Therefore, Section 162 of the Highway Code of 1927, *supra*, governs over Sections 7493 and 7499, Code of Alabama, 1923, *supra*, in respect to the right of entry of the condemnor pending appeal in all highway condemnation proceedings by the county. Likewise, Section 7499 controls over Section 7493 on appeal from the Circuit Court to the Supreme Court in condemnation proceedings in general.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 29, 1935

Hon. M. C. Thomas,
Sheriff, Jackson County,
Scottsboro, Alabama.

The feed bill and other costs incident to an inquisition of lunacy are paid by the county where the insane person has no estate from which said costs can be collected.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 7, 1935, in which you request my opinion as follows:

“When an insane person is committed to the County Jail under commitment from the Probate Judge, pending inquisition proceedings, or

pending transfer to the Insane Asylum, is it the duty of the State, or the duty of the Court of County Commissioners to pay for the feeding of said person during the time said person is confined in the County Jail?"

Under Section 7287, Code of Alabama, 1923, it is my opinion such feed bill is paid by the county on the presentation of an itemized account, sworn to as other claims presented to said court or boards of revenue or courts of like jurisdiction.

I think this is authorized under Section 7287:

"Services in relation to persons of unsound mind, the same fees as are allowed for similar services in other cases, to be paid out of the county treasury, if such person has no estate."

If the person has an estate and is able to pay then such person should be required to pay this expense and judgment against him should be rendered for the amount of costs including feed bill and if a return shows "no property found", then what we have said above would be the proper procedure.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 1, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Schools — Local contribution to match State funds cannot be refunded.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 16, 1935, which reads as follows:

"In the year 1928, a County Superintendent of Education and the Treasurer of School Funds credited as a receipt to the Erection, Repair and Equipment Fund the sum of \$500.00, as a local contribution and such amount was matched by a State warrant to the credit of such fund.

"Sometime, say one, two, three or possibly four years later, an individual or a representative of a Bank appears before the Board of Education and advises said Board that at the time the \$500.00 was turned in as a local contribution, said individual or Bank advanced this amount on a note signed by one, two, three or possibly ten people, who reside in

the locality of the School on which such money was spent and that such note is uncollected and also uncollectible. The Board of Education approves a pay roll authorizing the Treasurer to pay such note and interest on same. Reference — Section 137, Alabama School Code.

"Will you please advise me as follows:

"1. Is an expenditure as set out above a legal expenditure of County School Revenue?

"2. In the event such expenditure is illegal would same be a charge against the Superintendent and his official bond?

"3. In the event such expenditure is illegal, would same be a charge against the Treasurer and his official bond?"

Under the facts as above stated, I am of the opinion that your first inquiry should be answered in the negative.

Section 137 of the School Code of 1927, to which you refer, is not applicable in the instant case. Said section provides as follows:

"137. District Tax May Be Used for Building and Equipment. — The respective county boards of education and city boards of education in the respective counties and cities of the state of Alabama appropriate and use any district three mill tax that has been or may hereafter be voted in any school district to pay and discharge any obligations or debts which may have been or hereafter are created to build, furnish or equip a public school building for said school district, or to refund money out of the said three mill district tax to any person or corporation who has or may hereafter advance money for such purposes."

It will be noted that said section authorizes a refund to any person or corporation who has or may hereafter **advance money** for such purpose. "Advance money", as herein used, in my opinion, contemplates a loan transaction to the County Board of Education with the understanding that same be paid back. It does not contemplate a contribution, which is a gift, to said body.

Under your statement of facts the transaction was a contribution by the individuals. The fact that money was advanced by a bank to these individuals is immaterial.

In connection with the above, I wish to refer you to an opinion of this office rendered the County Superintendent of Education of Walker County, April 17, 1931, a copy of which is herewith enclosed.

Since the expenditure in question is illegal, your second and third inquiries should be answered in the affirmative. Both the County Treasurer of School Funds and the County Superintendent of Education would be liable on their official bonds for same. Both were participants in the illegal

expenditure of public funds. — **Opinion of Attorney General to State Superintendent of Education on July 12, 1933; Biennial Report of Attorney General, 1928-1930, p. 589; Biennial Report of Attorney General, 1930-1932, p. 310; See also Mobile County v. Williams, 180 Ala. 639, 61 So. 963.**

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 2, 1935

Hon. Henry S. Long,
President, State Tax Commission,
Capitol.

A person who has taken out a license and thereafter moves the business so licensed to a place in which a higher license is required, must take out such higher license before engaging in business in such new place.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 3rd, in which you state:

"We quote below copy of a letter under date of April 2nd, 1935 received from Mr. J. D. Sanders, Jr., our License Inspector of Houston County:

"I have a case where a filling station owner wishes to remove his place of business from outside the five mile limit of Dothan to a location about one mile from the city limits of Dothan.

"According to the McGowin bill of 1932, House Bill 341, the license buyer is granted permission to remove his business anywhere in the same county and operate under the same licenses. There is quite a difference in price of licenses in these two locations however, and as no one in the Probate Office here has ever seen a similar case handled here, I would like to have your opinion as to what procedure I must take in this circumstance."

"1. Will you kindly give us your opinion as to whether the party mentioned should procure a new license according to population of Dothan when he moves the filling station within the five mile limit?

"2. Will you kindly give us your opinion as to whether money paid on the license outside the five miles could apply on the new license if he is required to procure the new license?"

In answer to question 1, I advise that while the Act of 1932 apparently authorizes the transfer of a business from one place to another in the County, it is entirely out of harmony with the remainder of the Act if the transfer is to a place in which a higher license is levied by the statute. The terms being contradictory, the particular provision levying the license under a particular population classification will govern in my judgment rather than the general provision.

It will therefore be necessary for the reason to secure a new license under the new classification. I presume, however, that a refund of the unused portion of the license previously issued would not be amiss, but, as to that point, I do not express an opinion at this time.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 2, 1935

Hon. R. H. Williams,
Judge of Probate,
Guntersville, Alabama.

1. Under Section 577 of the Agricultural Code of 1927 "County Commissioners are required to furnish necessary chemicals, solutions and other materials required for operating dipping vats."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 30th, in which you state:

"I will thank you for an opinion on the following:

1. Would the Board of Revenue be authorized to pay for medicines or chemicals to be used in community cattle dipping vats?

2. Would the Board of Revenue be authorized to pay the premium on the bond of the disbursing officer of relief funds in this County? This disbursing officer handles funds of both Federal and County Governments."

In answer to question 1, I call your attention to Section 577 of the Agricultural Code of 1927, which provides:

"This statute specifically requires courts of county commissioners to provide necessary chemical solution and other materials required for dipping vats."

In answer to your second question, I enclose copy of opinion to Hon. J. M. Money, Probate Judge of Jackson County under date of June 26, 1934, which I believe answers your inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 3, 1935

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Peddler who has taken out proper peddler's license and who has no fixed place of business not liable for store license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 16, 1935, in which you state:

"There is a peddler in this county operating two wagons, who has bought a peddler's license. He has now been cited for a chain store license; please advise your opinion as to whether he is legally required to have this chain store license."

In reply, I beg to advise that if the party to whom you refer is purely a peddler and is not operating what is commonly known as a "rolling store", I do not think he is liable for store license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 10, 1935

Hon. J. W. Heustess,
Clerk, Board of Revenue,
Montgomery, Alabama.

Courts of County Commissioners — Payment of expenses of members of Boards of Revenue, Courts of County Commissioners or other like governing bodies who attend meetings in Montgomery, Alabama, for the purpose of promoting the construction and maintenance of public roads and bridges by means of educational lectures, exhibits and demonstrations at its meetings.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 7, 1935, in which you enclose the following resolution:

"A RESOLUTION

"WHEREAS, the Association of County Commissioners of Alabama promotes the construction and maintenance of good roads by means of educational lectures, exhibits and demonstrations at its meetings; and

"WHEREAS, That Association is to have such meeting on May 23rd, 24th, and 25th in Montgomery, Alabama; and,

"WHEREAS, it is the opinion of a majority of the members of this Court that it will be to the economic interest of construction and maintenance of Roads and Bridges of this County to have represented at that meeting.

"NOW THEREFORE BE IT RESOLVED that each of the members of this Court and _____

(Name any other the Court may wish to send)

are hereby authorized to go to said meeting; and, the necessary and needful expenses incidental to attending said meeting are hereby appropriated and ordered paid out of any Road and Bridge Funds in the Treasury, not otherwise appropriated, on presentation of proper expense accounts including \$25.00 to be paid the Association for this County's Annual Membership Fee for this calendar year, 1935 together with a similar amount, or any part thereof remaining unpaid, for the calendar year 1934."

You request my opinion as to whether or not, under the above quoted resolution, the expenses of the members of the various Boards of Revenue, Courts of County Commissioners, or other like governing bodies may be paid out of the Road and Bridge Funds of the respective counties in compliance with the terms of said resolution.

I am of the opinion that your inquiry should be answered in the affirmative. Same is governed by an opinion of this office rendered to the Clerk of the Board of Revenue of Montgomery County, under date of June 25, 1930, which reads as follows:

"Section 1347, Code of Alabama, 1923, provides that the board of revenue or court of county commissioners has the power and authority to do all things needful and necessary in and about the construction and maintenance of public roads. By said Act the several county boards are vested with general superintendence of the public roads, bridges and ferries within their respective counties, and may establish new, and change

and discontinue old roads, bridges and ferries so as to render travel over same as safe and convenient as practicable. To this end said Boards are given 'legislative, judicial, and executive powers' except as is limited in the Act, and for the purposes named in the Act have unlimited jurisdiction and powers.' They have the power and authority to pay all expenses necessary to obtaining information that may serve to better qualify said Boards to intelligently study said road matters.

"Henry v. Rogers, 97 So. 427.

"Where boards of revenue, and like bodies, exercise legislative jurisdiction, and such section is within the express or implied terms of the Act granting the power to them and there is an absence of 'fraud, corruption or unfair dealing,' our courts are committed to the doctrine that in no case involving the exercise of discretionary power will their action be controlled by any judicial tribunal.

"Ensley M. C. Co. v. O'Rear, Treas. 196 Ala. 481, 71 South. 704;
Eutaw v. Coleman, 189 Ala. 164, 66 South 464.

"The expense provided for in the instant resolution is for the benefit of the county in the construction, maintenance and repair of the roads of the county, and, being such, the wisdom of the expenditure is within the board, and in the absence of fraud, etc., with accountability only to the people."

The instant opinion and the one above quoted are not in conflict with other opinions of this office which deal with the subject of the payment of expenses of members of the Board of Revenue, Court of County Commissioners or other like governing bodies attending meetings of their respective bodies in general. Those opinions deal with the subject generally while the instant opinion and the one quoted above deal specifically with the construction and maintenance of public roads, bridges, etc.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

May 20, 1935

Hon. C. E. Corprew,
Sheriff, Tallapoosa County,
Dadeville, Alabama.

Counties — Liable for purchase of electric refrigerator used for prisoners in jail.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 13, 1935, in which you state that you have made application to the Court of County Commissioners of your County to buy and install an electric refrigerator for the jail.

You request my opinion as to whether or not it would be legal for same to be purchased and paid for out of county funds.

I am of the opinion that your inquiry should be answered in the affirmative. Section 4878, Code of Alabama, 1923, provides as follows:

"4878. Expense of maintenance, etc., how paid. — The expense incident to the construction, maintenance, sanitation, healthfulness and hygiene of each county jail, prison, and almshouse in this state shall be paid out of the funds of the county in which such institution is located and of the town or city, if the institution be a town or city institution."

In construing this section, the Supreme Court in the case of *Holcombe v. Mobile County*, 155 So. 640, held that the term "maintenance" applied to the jail and its equipment. An electric refrigerator used in connection with the feeding of the prisoners in the county jail is, in my opinion, such equipment of the jail as to come within the contemplation of this section.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 20, 1935

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Ala.

Electors — necessity for re-registration.

An elector who has been convicted of a crime which disqualified him to vote must re-register after pardon and restoration of civil rights.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated April 22, 1935, as follows:

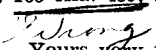
"Is it necessary that a former voter who has been convicted of a crime for which his name has been legally removed from the list of voters, but who has been pardoned and his civil rights restored re-register in order to again enjoy the privileges of voting?"

Your inquiry must be answered in the affirmative.

Section 385 of the Code of 1923 provides:

"Persons not required to register. — No person heretofore registered and no person hereafter registered shall again be required to register unless he or she changed the county or his or her residence."

But this Section does not apply when there has been an intervening disability. See *Shepherd v. Sartain*, 165 Ala. 439, 64 So. 57.


Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 23, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Trial Tax — State not liable for same in suits instituted by it.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 7, 1935, which reads as follows:

"Several cost bills in civil cases, brought by the State of Alabama, wherein the State failed to receive a judgment and the cost was taxed against it, have been submitted to this Department for collection. These bills include \$3.00 State Trial Tax, one half of which now goes to the County. I would like to know whether this Trial Tax should be paid.

"Similarly, I have some cost bills from the Clerk of the Inferior Court of Tuscaloosa County which include the Trial Tax of \$1.00 prescribed by law for that Court. I would also like to know whether this \$1.00 Trial Tax should be paid."

I am of the opinion that both of your inquiries should be answered in the negative.

This office has heretofore ruled that a Federal Reserve Bank was not liable for trial tax. — *Biennial Report of Attorney General, 1930-1932*, p. 703. In said opinion it was stated as follows:

"The State trial tax in Alabama first appeared in Section 4½ p. 284 of the General Revenue Laws of Alabama of 1919. The 1931 State Act

is amendatory of the General Revenue Law of 1919. Admittedly, the State statute exists for the purpose of raising revenue. The fact that the 1931 statute diverts half of the \$3.00 to the county is immaterial. The Act providing the State trial tax is a revenue raising measure. * * * "

To hold that the State would be liable to pay trial tax in suits instituted by it would be, in effect, holding that a State should tax itself.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 29, 1935

Hon. B. Cooper,
County Treasurer,
Marion County,
Hamilton, Alabama.

The members of the Court of County Commissioners of a county cannot employ relatives to do work or contract with relatives to do work, but the Court of County Commissioners as a whole, the Commissioner to whom the applicant is related not sitting as a member of the Court, may so employ a relative of one of the members of the Commissioners' Court.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows:

"Will you give me your ruling on this question?

"It has been reported to me that a party was working on the roads that was related to one of the County Commissioners, and looking over the minutes of the Commissioners Court I notice that this party was hired by the other three commissioners and the commissioner that was supposed to be related did not vote or was absent from the meeting. I have read the former opinions of the Attorney Generals and note what is said on page 389 in regard to a later ruling of the Supreme Court, which gives them the right to hire the relative. Am I protected under this rule to pay out money to this relative upon a warrant issued by said court and signed by the probate judge when the party has done the work as was hired for."

In the case of *Garrison v. Sumers* 154 So. 675, the Alabama Supreme Court has ruled that the Court of County Commissioners may employ a relative of one of the Commissioners, provided the Commissioner to whom this employee is related did not sit as a member of the Court when the Court was considering or voting upon the contract. The Court states that individuals

composing the Courts of County Commissioners are prohibited "to sit as members of the Court when considering or voting upon any county contract with any person so related to the individual member."

Under the rule as laid down in this case, if the minutes of the meeting of the Court of Commissioners show that the member of the Court who is related to the employee, did not sit as a member of the Court when the Court was either considering or voting upon the contract, then the warrant may be paid; otherwise not.

Clearly, if the related commissioner was absent from the meeting, when the employment was being considered and voted on, the warrant should be paid.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 4, 1935

Hon. T. R. Snead,
Judge of Probate,
Cherokee County,
Centre, Alabama.

A person who engages in transporting by motor truck for the public though it may not be his main business, may come under the Alabama Contract Common Carrier Motor Vehicle Act of 1932, and would be required to qualify under Motor Carrier Act of 1932.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 11, 1935, in which you request my opinion as follows:

"Mr. R. A. Howell of Spring Garden, Alabama, has been notified by some officer of Calhoun County to qualify as a Contract Carrier. Mr. Howell came to see me and is ready to qualify if he is liable. However, there is some doubt as to the liability of Mr. Howell, so at my request Mr. E. V. Brindley called to see you while in Montgomery last Monday. You were out of town so Mr. Brindley talked with your representative and at his request I am submitting a statement of facts regarding Mr. Howell and asking for an opinion of the Attorney General or a ruling by the Public Service Commission as to the liability of Mr. Howell.

"Mr. Howell owns and operates a farm and a cotton gin. This is his principal business. He also owns a Chevrolet truck, 1½ ton capacity, no trailer. He hauls his own cotton and cotton seed to market. This is the principal business of the truck. He also hauls for his neighbors any cotton or other produce they want carried to the market. Occasionally he hauls household goods for some one who is moving in or out of the

State of Alabama. When he hauls cotton he charges so much per bale. Household goods so much per day or trip. During the spring he hauls fertilizer and charges so much per ton. The operation of this truck is a side line as Mr. Howell's principal business is operating his farm and gin.

"Under the statement of facts as above stated, would Mr. Howell be liable to qualify as a Contract Carrier?"

Answering your letter, I find from the facts set out in your request that this party does not come under the Alabama Motor Carrier Act of 1931, for the reason that he does not have a regular route nor does he operate between fixed termini. Therefore, if he is required to qualify, it is under the Alabama Contract-Common Carrier Act of 1932. Section 1 of said Act is as follows:

"Section 1. As used in this Act, (a) 'Motor Vehicle' means any motor propelled vehicle not usually operated over or on rails used for the transportation on the public highways in this State of persons or property for hire, and shall include any such vehicle operated as a unit in combination with another vehicle used for such purpose; (b) 'Operator' means any person, firm, partnership, association, joint stock company, corporation, lessee, trustee, or receiver appointed by any court whatsoever owning, controlling, operating or managing any motor vehicle used for the transportation of persons or property for hire; (c) 'Common Carrier' means any operator of a motor vehicle who engages in the motor transportation business for hire as a public employment, provided, however, neither the term 'common carrier' nor any other provision of this Act, shall be construed to mean or include any motor transportation company or common carrier subject to the provisions of the Alabama Motor Carrier Act of 1931; (d) 'Contract Carrier' means any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public. 'Contract Carrier' shall not be construed to mean or include: 1. Any farmer, merchant, manufacturer, or any other person, firm, association or corporation who transports only his own property; or, 2. A cooperative association, when transporting only property belonging to the association, or its members, and when no profit is charged for such transportation; or, 3. Any person, firm, association or corporation who does not regularly engage in the transportation business but occasionally transports persons or the property of others for hire; or 4. Any person, firm, association or corporation when transporting only property offered for sale, sold, or to be sold by him; (e) 'Public Highway' means every public street, alley, road or highway (including bridges) in this State whether within or without the corporate limits of any municipality; (f) 'Permit' means the permit to operate authorized to be issued under the provisions of this Act; (g) 'Commission' means the Alabama Public Service Commission."

I call your special attention to subsection 3 of the above statute, which is as follows:

"3. Any person, firm, association or corporation who does not regu-

larly engage in the transportation business, but occasionally transports persons or the property of others for hire."

If Mr. Howell is exempted from the operation of this Act, it is by the subsection set out above; but the facts as set out in the request are not full enough for me to reach a positive decision. The fact that he only operates this truck as a side line does not within itself bring his business within the exception set out above. You state that Mr. Howell occasionally hauls goods for someone moving, etc. The word "occasionally" depends in this instance for its meaning on what is in the mind of the person using it. For instance, one person may think where such trips are made every other day, this would be "occasionally". In the minds of others two trips a month would be "occasionally".

You will note that subsection 3, *supra*, states the following: "who does not regularly engage in the transportation business." This does not mean that a person's main business or occupation must be the transportation business, but, in my opinion, means "any person, firm, partnership, association, joint stock company, corporation, lessee, trustee, or a receiver appointed by any court whatsoever", who holds himself out as being ready and willing to transport goods, wares or merchandise and charge for such transportation, even though he may not in fact make frequent trips, but stands ready at all times, when not otherwise engaged, to make such trips and engage in transportation. When so employed, such person would be a common-carrier and would come under the provisions of the Contract Common Carrier Motor Vehicle Act of 1932.

As stated above, I am not able, from the facts you give me, for the reasons set out, to state positively whether Mr. Howell comes under the Act referred to, but I have attempted to define, as best I can, what is necessary in order to place one subject to this Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 4, 1935

Hon. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
Capitol.

1. H. B. 81 approved February 5, 1935, inoperative to change or repeal existing statutes relative to lands sold for taxes.

2. When section of Code is amended by reference to its title, the subject added by amendment must be germane to, suggested by and supplemental to subject matter of original section.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your inquiry of April 4, 1935, relative to the constitutionality of House Bill 81, approved February 5, 1935. You inquire:

"Your attention is called to the provisions of an Act approved March 30, 1933 (page 74, Acts 1933), wherein it is provided that 'real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State.'

"Does the provision of House Bill 81 above quoted have the effect of shutting off the redemption right granted by the 1933 Act?

"Does House Bill 81 have the effect of amending those Sections of the Code applying to land redemptions, although there is no reference to those Sections of the law in the caption of the Bill, nor was there any reference to redemption rights in the Section attempted to be amended?

"Can House Bill 81 transfer certain duties to the State Tax Commission when the duties of the State Tax Commission are not mentioned in the caption of the Bill and were not mentioned in the original Act which this Bill attempts to amend?

"Is the State Tax Commission now relieved of all duties relating to lands bid in for the State at tax sale except those set out in Sections 3096-3098, Sections 3100-3108, and 3120-3133, inclusive, of the Code of 1923?

"Is the State Tax Commission authorized to make sales of tax lands in accordance with the provisions of Section 3120 of the Code? Can the Tax Commission appoint land agents in accordance with the provisions of Sections 3135-3136 of the Code? Does House Bill 81 take away the powers of the land agents already appointed by the Tax Commission authorizing them to protect said lands against trespassers, to rent said lands, etc.?

"Should a new revenue law be enacted, embodying Sections relating to the sale of lands for the payment of taxes, the bidding of such lands for the State, the custody, supervision and administration of such lands etc, — would this new law take precedence over House Bill 81 in all respects where there was a conflict in the provisions, if the new Act carried only a general repealing clause without specifying the repeal of the specific Sections of said House Bill 81 which conflicted?"

All of the above inquiries can be answered in the one statement, that, in my opinion that part of Section One of House Bill 81, approved February 5, 1935, which undertakes to amend or change the effect of existing statutes relating to sale of lands for taxes and the redemption of said lands from said tax sales is wholly unconstitutional.

Section 45 of the Constitution directs "that each law shall contain one

subject, which shall be clearly expressed in the title." House Bill 81 undertakes to amend certain sections of Chapter 28 of the Code of 1923. The title to the Act is:

"To amend Sections 989, 992, 993, 995, 1005 and 1007 of the Code of Alabama, 1923."

When sections of the Code are amended by reference to their titles, the subject added by the amendment must be germane to, suggested by and supplemental to the subject matter of the original section. **State ex rel. Troy v. Smith, State Auditor**, 187 Ala. 411, 65 So. 943; **Board of Education of Clarke County v. Blan, State Auditor**, 218 Ala. 665, 120 So. 145; **State ex rel. Lister v. Hawkins**, 155 So. 694.

The Code of 1923, Section 989, provides that the Forestry Commission make certain reports upon forest conditions in Alabama with reference to the preservation of forests; making reports to the Legislature concerning the investigations of the Forestry Commission; giving advice and assistance to private persons concerning Forestry and forest culture, and making reasonable regulations for the prevention of forest fires.

The amendment to this section undertaken by House Bill 81 provides:

"The Commission shall select from unused lands owned absolutely by the State, including real estate sold for taxes and purchased by the State and which shall have been in the title of the State for a period exceeding the period allowed for redemption when purchased by any purchaser other than the State, tracts, parcels or areas which it shall have determined to be suitable for State Forests or State Parks and, upon the approval of the Governor, such tracts, parcels or areas shall thereafter be devoted permanently to the purposes of State Forests or State Parks and shall not be sold or alienated from the title of the State or otherwise disposed of by the State except upon the recommendation of the Commission or as otherwise provided in this Section, and any State agency having had authority for the sale or other disposition of such tracts, parcels or areas prior to their selection as State Forests or State Parks shall enter upon its records, upon notice from the Commission, appropriate notations or entries as though the said tracts, parcels or areas had been sold and to the effect that they are no longer available for alienation from State title through said agency * * * The Commission of Forestry shall have custody, management and administration over all lands sold to the State for unpaid taxes, except as to the enforcement of Sections 3096 to 3098, inclusive, Sections 3100 to 3108, inclusive, and Sections 3128 to 3133 inclusive of the Code of Alabama of 1923, the enforcement of which sections is hereby placed with the State Tax Commission. Where any of the lands of the State, or of any department, institution or agency of the State, are in scattered or non-contiguous tracts, the State Commission of Forestry is authorized, subject to the approval of the Governor or of the executive officer of the department, institution or agency to which such lands pertain or which is vested with the management and administration of said lands, to exchange such tracts for others of equal value, privately or publicly owned, to the end that the lands of the State or any of its departments, institu-

tions or agencies may be better consolidated for economy and efficiency in administration, protection and use, and to do such other things as may be necessary to give full effect to this section of this article."

The statutory set up for sale of lands for taxes and redemption of lands sold for taxes, provided by Articles 7 and 8 of Chapter 28 of the Code of 1923, is radically and materially changed. The title of the amendatory act gives no clue of the changes contained therein; and H. B. 81 is, therefore, to the extent indicated violative of Section 45 of the Constitution.

Inasmuch as the Act is unconstitutional in part for the reasons set forth hereinabove, all of the questions asked in your inquiry are answered together.

Yours very truly,
A. A. CARMICHAEL
Attorney General.

June 8, 1935

Court of County Commissioners,
Colbert County,
Tuscumbia, Alabama.

Courts of County Commissioners — may appropriate county funds for development of airport in county, provided project is not for gain.

On approval of the Governor, may make appropriation to match Federal funds to be expended in the County for public purposes.

Opinion by Assistant Attorney General Rowe.

Gentlemen:

I have your request for opinion, over the signature of C. E. Carmichael, Esq., your attorney, as follows:

"About two years ago the Town of Muscle Shoals bought acreage amounting to about 240 acres to be used as an airport. The Town gave a mortgage for the unpaid purchase price amounting to something over \$12,000.00. The project was started and about \$75,000.00 or more of relief money was spent in grading etc. The town has been unable to meet the payments on the mortgage and has made efforts to get the TVA to take this project over and develop it. The TVA has agreed to pay all of the indebtedness due on account of said mortgage except \$2500.00. They agree to build hangars and develop the project into a model airport for the use of their planes and for the public at large. The town is not financially able to assume the \$2500.00 and they have appeared before the Board of County Commissioners of Colbert County and requested the County to assist in the development of the said airport. The County has

agreed to pay the said \$2500.00 or what amount is due after the TVA has made their contribution.

"The question we want answered is can the Board of County Commissioners or like governing body match Government funds for the development of the airport located in their County. The airport is to be used by the public at large, there being no restrictions except prohibition of field being used for commercial purposes. Title to the said airport is to be in the Tennessee Valley Authority, an agency of the United States of America."

Your inquiry must be answered in the affirmative.

Subsection 23 of Section 6755 of the Code of 1923 provides:

"The Court has authority — To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

The Supreme Court in *Stone v. State*, 136 So. Reporter, 727, 223 Ala. 426 pointed to Section 94 of the Constitution as a limitation on the field of operation of this subsection. There the rule is laid down that county funds cannot be appropriated to any "project originated by individuals, whether associated or otherwise, with a view to gain."

As I understand the facts set forth in your request for opinion, the project for which the appropriation is proposed can never be used "with a view to gain."

In my opinion the county governing body may properly make the appropriation for the purpose inquired about.

In this connection, your attention is invited to Section 17, Act No. 19, Regular Session 1935, approved January 31, 1935, which provides:

"Section 17. That the proceeds from one cent of the tax herein levied shall be equally divided among the sixty-seven counties of the State of Alabama monthly as collected, less the actual cost of collecting the same, payment to be made to the County Treasurer or Depository of said counties on the 10th day of each month of the year; and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided, however, that the Board of Revenue or other such governing body of a county may, at any time within twelve months from the passage of this Act, use at their option, subject to the approval of the Governor of the State of Alabama, any of such proceeds as collected for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county."

Under the authority of this Act the county governing body, with the approval of the Governor, may appropriate funds to match any United States Government funds on a fair and reasonable basis that may be expended in the county.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 10. 1935

Hon. R. C. Beverley,
Sheriff Randolph County,
Wedowee, Alabama.

Section 3741 Code of Alabama, 1923 where it says for attendance each day to be paid by the County \$2.00 has reference only to Criminal Courts where jury is summoned and no others.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 7, 1935, in which you request my opinion as follows:

"Under Section 3741, Article 5, fees of sheriff for attendance each day on terms of such Court is \$2.00. Am I allowed to charge this fee where I, as sheriff, have a prisoner in my charge in the jail in Wedowee, and said prisoner is carried by me to Roanoke for preliminary hearing before Justice of the Peace there? The mileage alone in this case is 28 miles round trip."

My answer to your inquiry is in the negative. You will notice this part of Section 3741 Code of Alabama, 1923, "For attendance each day on such court to be paid by the County \$2.00." You will note by referring to the language of the Section or Division of the Code just preceding the quotation here that it has only reference to Criminal Courts where jury is summoned and no others.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 11, 1935.

Hon. Ed. H. Dolbear,
Secretary, Jury Board Mobile County,
Mobile, Alabama.

Juries — County may legally furnish Jury Board with City Directory.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 12, 1935, in which you request my opinion as to the legality of Mobile County furnishing the Jury Board of Mobile County with a city directory to carry on its work as directed by law in preparing the jury rolls and jury cards for the courts of said county.

I am of the opinion that your inquiry should be answered in the affirmative.

The jury board law relative to Mobile County is found in Act No. 47, House Bill 70, approved February 20, 1931, (Acts 1931, p. 85). Section 17 of said Act provides in part as follows:

“ * * * The Jury Board shall require the clerk of the Board to scan the registration lists, the lists returned to the tax assessor, any city directories, telephone directories, and any and every other source of information from which he may obtain information, and to visit every precinct at least once a year to enable the Jury Board to properly perform the duties required of it by this Act.”

The liability of a county for expenses is confined to those matters authorized by statute or by necessary implication. — **Ensley Motor Car Co. v. O'Rear**, Treasurer, 196 Ala. 481, 71 So. 704.

It appears in the instant case there is a necessary implication for the county furnishing the Jury Board with a city directory, under the above quoted portion of Section 17, supra. Since it is necessary to consult this city directory in order to prepare the proper jury lists, it follows that said directory must be furnished the jury board in order for same to be done. Such, in my opinion, authorizes the expense in question by necessary implication authorized by law. — **Ensley Motor Car So. v. O'Rear**, supra.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 11, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Costs — Judges of the Circuit Court are without authority to remit.

Upon an illegal or unauthorized remission of such costs by the Circuit Judge, officers releasing prisoner without requiring payment of all costs, including that undertaken to be remitted, are not liable therefor upon their official bonds.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"1. Where a defendant appeals to the Circuit Court from a conviction in the County Court and on such appeal is adjudged guilty on his plea of guilty and is fined and the Circuit Judge attempts to remit a portion of the costs imposed by law by a judgment entry reading, in part, as follows: '—is fined \$25.00 and costs, except the Solicitor's fee in the Circuit Court, which is remitted,' is that portion of the judgment entry relating to the attempt to remit the solicitor's fee a nullity?

"2. If such an attempted remission of a portion of the costs is void, is the Sheriff responsible under his bond for the amount of such costs if he releases the prisoner?

"3. Does any liability rest on the Clerk of the Court for failure to charge the Solicitor's fee so attempted to be remitted and to issue execution thereon as required by law?

"4. There is another case where the Circuit Judge imposed on a convicted defendant 'Fine of \$25.00 and \$250.00 costs, which is to be apportioned among the officers interested.' In this case the costs would have been nearly \$300.00. Has the Circuit Judge authority to tax costs in criminal cases at his pleasure, or are such costs taxed by operation of law?"

Your first question must be answered in the affirmative.

The decision of the Supreme Court in response to the certified question by the Court of Appeals in the case of *Montgomery v. State* (now in manuscript), specifically holds that Acts Extra Session 1932, page 54, amending Acts 1931, page 444, which purported to give authority to Circuit Judges to suspend sentences, is unconstitutional and void.

The remission of a part of the costs is not within the province nor the power of the Circuit Judge. See *Chisholm v. State*, 42 Ala. 529 — 15 C. J. Page 346, Art. 868.

Your second inquiry must be answered in the negative.

Section 10197 of the Code of 1923 provides:

"10197. Justification under process regular on its face. — Whenever it appears that the process is regular on its face, and is issued by competent authority, a sheriff or other ministerial officer is justified in the execution of the same, whatever may be the defect in the proceeding on which it was issued."

This statute is merely declaratory of the common law rule, *Walker v. Graham*, 154 So. 806, 228 Ala. 574.

The Circuit Court, or the Circuit Judge, under Acts 1931, page 444 as amended by Acts Extra Session 1932, page 54, had apparent authority to remit the item inquired about. Under the statutory rule (which is also the common law rule), the Sheriff was not liable for the amount of the costs attempted to be remitted, if he released the prisoner without its payment.

Your third inquiry must be answered in the negative, for the same reasons upon which my opinion is rested next hereinabove.

In this connection, it is the general rule that the fact that the law under which the officer acted is unconstitutional, is immaterial insofar as his liability is concerned. See 57 Corpus Juris, page 907, Article 533.

Your fourth inquiry must be answered in the negative.

Costs are fixed by statute and the Circuit Judge is without authority to change the terms of the statute in undertaking to tax or assess costs.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1935

Hon. F. W. McLane,
Clerk of the Circuit Court,
Talladega, Talladega County, Ala.

Costs and Fees — Payable out of Fine and Forfeiture Fund when defendant is serving long time Federal sentence before serving State sentences for hard labor to pay costs.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 18, 1935, from which the following facts appear:

"A defendant was tried and convicted in the Circuit Court on an appeal from the Inferior Court in 1934. The prosecution was based on a complaint rather than an indictment. He was fined \$100.00 and costs and sentenced to hard labor for ten days in lieu of payment of fine and fifty-three days in lieu of payment of costs. He appealed to the Court of Appeals. His appearance bond being fixed at \$100.00. The case is now pending in the Court of Appeals and will be dismissed or affirmed as no bill of exceptions has been or will be filed.

This defendant was convicted in the Federal Court in Birmingham some two or three months ago and was sentenced to life imprisonment or for a long time."

In view of the above you request my opinion as follows:

1. When the case is dismissed or affirmed by the Court of Appeals, would appeal bond be forfeited and execution issued against the bondsmen? In other words would the bondsmen be liable for the costs and fees?
2. Could execution issue against the defendant and if returned "no property found" would the Fine and Forfeiture Fund be liable for the costs and fees?
3. Could the trial judge render an order withdrawing and filing the indictment?

I am of the opinion that your first inquiry should be answered in the negative. The bail bond given under Section 3443 is for the purpose of securing the person of the defendant after an affirmance of the case. Under Section 3445 the defendant could surrender himself to the sheriff within fifteen days after affirmance of the case and if he failed to do so, the bail bond is forfeited and execution issued thereon. However, the fact that the defendant is being held in custody by the Federal authorities would be a defense against the forfeiture. The bond given under Section 3445 is not a bond to secure the payment of the fine and costs as is the bond given under Section 3446. If the bond is given under Section 3446, there would be no sentence to hard labor to pay the fine and costs.

I am of the opinion that your second inquiry should be answered in the affirmative, provided there is a judgment against the defendant for the costs.

The payment of witness fees and fees of officers out of the Fine and Forfeiture Fund is governed by Section 4039, Code of 1923, as amended by Acts, 1927, p. 45. In cases where the defendant has been convicted, payment out of the Fine and Forfeiture Fund can be had only after execution has

been issued against the defendant and returned "no property found." But before execution can legally issue there must be a judgment against the defendant for the costs. — **Opinion of Attorney General to Clerk Circuit Court, Marion County, on May 20, 1931.**

Under Section 5291, Code of 1923, a convicted defendant may satisfy the judgment for costs against him in several ways, one of which is performing hard labor for the county. However, the mere election of a defendant to perform hard labor to pay costs would not prevent a judgment against him for such costs. Unless he had actually discharged the costs by his labor, an execution could issue against him for all of the costs or any part of it. It is only the hard labor actually performed by the convict that lessens his liability for costs. — **Biennial Report of Attorney General, 1928-1930, p. 227.** See also *In re Pierce*, 89 Ala. 177; *Clark v. State*, 2 Ala. App. 196.

Applying the above principles to the instant case it follows that if there is a judgment against the defendant for costs execution may issue against him, and if returned "no property found", the witness fees and fees of the officers may be paid out of the Fine and Forfeiture Fund.

The fact that the defendant is in the custody of the Federal authorities for life or a long time, prevents the defendant from working out the costs with the State. The mere election to serve hard labor would not prevent judgment against him for costs. Upon the affirmance of the case the sheriff should notify the Federal authorities and they should hold the defendant for him after his sentence has expired or he is otherwise discharged by pardon or the like. Then he should be turned over to the State Convict Department to work out the costs in question. The county having paid the costs, it would be entitled to the earnings of the convict, viz., the items paid by the Convict Department under Section 3667, Code of 1923. — **Lovelady v. Copeland**, 198 Ala. App. 625.

I am of the opinion that your third inquiry should be answered in the negative for the reasons: (1) The Circuit Court lost jurisdiction when the appeal was perfected. — **Biennial Report of Attorney General, 1928-1930, p. 680. State v. Williams**, 19 Ala. App. 597. (2) Only prosecutions based on an indictment are authorized to be withdrawn and filed under Section 4538, Code of Alabama, 1923. — **Opinion of Attorney General to Clerk Circuit Court, Talladega County, on January 3, 1935.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1935

Hon. J. R. Hardy,
Sheriff, Chilton County,
Clanton, Alabama.

Juveniles — Costs and fees in cases transferred from Circuit Court to Juvenile Court.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 4, 1935, which is as follows:

"A defendant by the name of Melvin Turner was arrested and charged with murder, was held in jail for some few months and then was indicted for manslaughter in the first degree. At the call of his case in Circuit Court the defendant made a motion before the Court to the effect that the defendant was under sixteen years of age and the Court ascertained the defendant to be under sixteen years of age, and accordingly transferred his case to the Juvenile Court, which is the Probate Court of Chilton County, and the defendant remained in jail for some few weeks after the case was transferred and before the trial in the Probate Court. At the trial in Probate Court or Juvenile Court, the Judge declared the defendant to be a delinquent child and a ward of the Court and has placed the defendant on probation, which is the present status of this case.

"I desire your opinion on the following:

"First, whether the State or County pays the expenses for feeding the defendant prior to the time that the defendant was ascertained to be under sixteen years of age by the Circuit Court, and whether the State or County pays the expenses for feeding the defendant after the defendant was found to be under sixteen years of age and his case transferred to the Juvenile Court.

"Second, will you please advise me whether or not the sheriff is entitled to his regular fees in Circuit Court prior to the time that said cause was transferred to Juvenile Court and if so the method and manner that said fees are collected.

"Third, will you please advise me whether or not the sheriff is entitled to fees for services rendered in this case after the case is transferred to Juvenile Court."

In answer to your first inquiry, I am of the opinion that the expenses for feeding the defendant prior to the time he was committed to the Juvenile Court are borne by the State, but after commitment said expenses are paid by the county.

The status of the defendant, before he was committed to the Juvenile Court, is the same as any other prisoner. Therefore, the State is liable for the expenses of feeding said defendant under Sections 4827 and 4828, Code of Alabama, 1923, as amended by Acts, 1927, p. 694.

However, after the defendant has been committed to the jurisdiction of the Juvenile Court, the feeding expenses are borne by the county under the latter part of Section 3529, Code of Alabama, 1923, as amended by Acts 1931, p. 356, which provides as follows:

" * * * All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expenses of maintenance and care of children that may be incurred by order of the court in carrying out the provisions and intent of this chapter, shall be valid charges and preferred claim against the county and shall be paid by the county treasurer when itemized and sworn to by the creditor or other persons knowing the facts in the case, and approved by the judge."

This office has ruled that when one is committed to the jurisdiction of the Juvenile Court, he is not a "prisoner" within the meaning of Sections 4827-4828, as amended, *supra*, but becomes a "ward" of the State. Therefore, the expense of feeding such a person is borne by the county under the statute as above quoted. — **Biennial Report of Attorney General, 1930-1932, p. 371.**

I am of the opinion that your second inquiry should be answered in the affirmative. As above stated, the status of defendant before being committed to the jurisdiction of the Juvenile Court is the same as any other prisoner and the costs and fees attach accordingly.

It has been held by this office that a transfer from the Circuit Court or County Court to the Juvenile Court is in effect a *nolle prosequi*. Furthermore, it is a case where the defendant was not convicted, therefore, the costs and fee accrued in the County and Circuit Courts are proper charges against the Fine and Forfeiture Fund of the County. — **Biennial Report of the Attorney General, 1926-1928, p. 749; Biennial Report of the Attorney General 1924-1926, p. 74.**

I am of the opinion that your third inquiry should also be answered in the affirmative. Section 3558, Code of Alabama, 1923, provides as follows:

"3558. Officer serving process, etc., under juvenile courts; costs and fees of. — All officers serving process from juvenile courts, or feeding prisoners committed by, or held for or under such courts, shall receive the same costs, fees, and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to process issued by the circuit courts or courts of like jurisdiction, and for feeding prisoners committed by circuit courts or courts of like jurisdiction."

This section is applicable after one has been committed to the jurisdiction of the Juvenile Court under the provisions of Chapter 100 of the Code of 1923, as partially amended by Acts, 1931, p. 353. Therefore, the above quoted provision of Section 3529, Code of 1923, as amended, *supra*, would be applicable and such costs and fees as are properly chargeable under Section 3558, are payable by the county out of its General Fund and not the Fine and Forfeiture Fund of costs incurred in cases which have been transferred to the Juvenile Court.

All former opinions or parts thereof, in conflict with the above are hereby overruled and withdrawn. This has particular reference to the following opinions: **Biennial Report of Attorney General, 1930-1932, pages 48-901; Biennial Report of Attorney General, 1928-1930, pages 662, 132; Biennial Report of Attorney General, 1926-1928, page 683.**

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 13, 1935

Hon. J. J. Flowers,
Vice President, Dothan Bank & Trust Co.,
Dothan, Alabama.

Solicitor's fund — Surplus thereof may be transferred to Fine and Forfeiture Fund only on order of the County governing body.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter dated May 27, 1935, as follows:

"We have as Treasurer of Houston County \$158.00 in our County Solicitor's Fund. The Solicitor's salary has been paid in full and leaves this balance of \$158.00. There is a demand made upon us by some holders of fine and forfeiture claims that we transfer this \$158.00 from the Solicitor's fund to the fine and forfeiture fund with which to pay the fine and forfeiture claims."

In my opinion, the County Treasurer is not authorized or required to transfer the surplus in the Solicitor's fund to the fine and forfeiture fund of the County, except upon an order of the Court of County Commissioners directing such transfer.

Section 3759 of the Code of 1923 provides for the payment of Solicitor's fees taxed in the County and Inferior Courts into the County Treasury.

Section 3669 of the Code of 1923 provides:

"Surplus paid to fine and forfeiture fund. — The surplus money paid into the state and county treasuries arising from the solicitor's fees after the solicitors and their assistants have respectively been paid the amounts allowed them by law, shall be paid into the fine and forfeiture fund of the respective counties in direct proportion to the amount received from the convictions respectively."

In my opinion, the transfer of the surplus in the Solicitor's fund in the County Treasury to the fine and forfeiture fund may be legally made and done; but it should not be done by the County Treasurer without first having an order of the County governing body directing such transfer.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 13, 1935

Col. Page S. Bunker,
State Forester,
Capitol.

Court of County Commissioners—May appropriate county funds to construction and maintenance of State Parks within county, under

authority of Code of Alabama, 1923, Section 6755, Subsection 23.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated May 2, 1935 as follows:

"Various counties of the state have within their boundaries certain scenic and recreational resources which, when developed either by private or by public agencies, may constitute substantial sources of revenue from tourists, campers, vacationers, and other person resorting to the outdoors for health and recreation. In many sections of the South the business derived from such resources comprises the principal community income.

"In the above connection the governing boards of certain counties have considered cooperating with the State in the development of public park areas of large acreage with view to rendering available to general use the resources mentioned. Apparently pertaining to such policies are certain provisions in Subsection 23 of Section 6755 of the Alabama Code of 1923 which vests the Commissioners' Court with authority 'To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, etc'.

"Your opinion is requested as to whether counties have the authority to appropriate and use county funds and revenue for the purpose of contributing to the establishment of a State Park designed and developed to render accessible and available scenic and recreational resources as indicated above, either independently or jointly with the State agency having charge of State Parks."

In my opinion, the County Governing Body may make reasonable appropriations from county funds for the purpose of establishing or maintaining parks within the county, and that such governing body may act independently or in cooperation with the State.

County governing bodies are creatures of the Legislature and have no authority save that expressly or by fair implication delegated by their creator. *Edwards v. Williamson*, 70 Ala. 146; *State vs. Street*, 117 Ala. 203, 23 So. 507. See also *Biennial Report of the Attorney General 1928-1930*, pages 57 and 58; *Woodruff vs. Beeland*, 127 Sou. 235.

Subsection 23 of Section 6755 of the Code of Alabama, 1923 grants to Courts of County Commissioners authority:

"To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their

respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties".

The Supreme Court of Alabama was held, in passing on this subsection, that the provision does not undertake to authorize appropriations of public money in furtherance of "any project originated by individuals, whether associated or otherwise, with a view to gain." **Stone, County Treasurer, v. State Ex. Rel. Mobile Broadcasting Corporation**, 223 Ala. 426, 136 No. 727.

I understand that the proposed State Parks to which County funds are to be contributed will, when established, be open to the public for recreational purposes, and will be operated without "a view to gain". In my opinion such appropriation can legally be made by the County Governing Body.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 13, 1935

Honorable Howell Turner,
Secretary of State,
Capitol.

Licenses and Taxes—RFC Mortgage Company, Inc. and Federal Agency and Exemption from Licenses and Taxes.

Costs and Fees. Recording fee for filing Articles of Incorporation of Federal Corporation not a tax.

Opinion by Assistant Attorney General small.

Dear Sir:

I have your letter, in which you request my opinion, as follows:

"The RFC Mortgage Company, Incorporated under the laws of the State of Maryland, has submitted to this office a certified copy of its charter and a certificate designating an agent and place of business designed in Alabama, together with an affidavit and other proof showing that the entire capital stock of said corporation was subscribed for, purchased and is now owned by Reconstruction Finance Corporation under the provisions of Section 5c of Reconstruction Finance Corporation Act, as amended, of January 31, 1935.

"The RFC Mortgage Company requests that said certified copy of its charter and said certificate designating an agent and place of business in Alabama be received and filed in the office of the Secretary of State for the purpose of qualifying to do business in the State of Alabama.

"You will note from the documents herewith submitted that, as an agency or instrumentality of the United States, the RFC Mortgage Company claims to be exempt from the payment of any taxes, licenses or fees.

"I will thank you to furnish this office with a ruling or opinion upon the questions of law involved, including:

"(1) Whether the RFC Mortgage Company in such an agency or instrumentality of the United States, and as such whether it is exempt from the payment of any taxes, licenses or fees.

"(2) Whether the Secretary of State should require said company to pay the filing fee of \$10.00 for the use of the State under the provisions of Section 7210 of the Code or under any other provisions of law."

In answer to your first inquiry I beg to advise that in my opinion the RFC Mortgage Company, Incorporated, is an agency or instrumentality of the Federal Government and as such is exempt from payment of license and taxes imposed upon foreign corporations by the State of Alabama. I refer you to the case of **Alabama vs. United States**, 38 Federal (2nd) 597, in which the Court said:

"That where an agency is created and all of the agent's property is acquired and owned by the United States for the purpose of exercising a constitutional right, the taxation of its property or the sale of its property or the products thereof is a taxation of the means employed by the government to perform a constitutional function * * *".

"In selecting the means to carry out and perform its constitutional powers, the government may invade the field of what is called 'private business', and to the extent that it does, it is performing what it can only perform—a public function. A state by reason of its original and reserved sovereignty may engage as a separate personality or corporation in what is called 'private business' and thus subject itself to certain liabilities. But when the United States enters the field of so-called private business even as a separate personality or corporation, in order to effectuate certain of its granted powers, its action in so doing is a public act and it is not liable to be treated as a private individual and be subjected to taxation as such. *Clallan County vs. United States*, supra. The Court in that case said: 'The incorporation and formal erection of a new personality was only for the convenience of the United States to carry out its ends'. That is to say, it could invade the domain of private business in the form of a private corporation for its own convenience

and to carry out its own ends, yet it would not be conducting a business in a private capacity but as a governmental agency and is be exempt from taxation "

I further refer you to *De LaVergne Machine Co. vs. State Tax Commission*, 207 N. Y. Supp. 680; *Clallan County vs. United States*, 263 U. S. 341; *United States vs. Coghlan*, 261 Fed. 425; *King County vs. United States Shipping Board Emergency Fleet Corp.*, 283 Fed. 950; *United States Spruce Production Corp vs. Lincoln County* 285 Fed. 388; *United States Grain Corp. vs. Phillips*, 261 U. S. 106 *United States of America and Reconstruction Finance Corp. vs John B. Lewis, Emerson Beauchamp, and Pat Sullivan et al.* (Decided April 8, 1935, by the District Court of the United States for Western District of Kentucky.) *Railroad Company vs. Peniston*, 18 Fall, 5. *King County vs. United States Shipping Board Emergency Fleet Corp.*, 282 Fed. 950; *McCullough vs Maryland*, 4 Wheat, 316; *Osborn vs. Bank of United States*, 9 Wheat 738.

In answer to your second inquiry wish to advise that the Secretary of State should require the RFC Mortgage Company, Inc. to pay the filing fee of ten dollars (\$10.00) for the use of the State. I refer you to the case of the *Federal Land Bank vs. Crossland*, 261 U. S. 374; 67 L. ed. 703; 43 Sup. Ct. Rep., 385; 29 A. L. R. 1. I further refer you to the opinion of the Attorney General rendered at the request of Secretary of State Honorable Pete Jarmon on February 27, 1934, a copy of which is inclosed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 13, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Counties—Not liable for medical services for injured employees.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 27, 1935, in which you request my opinion as to whether the Court of County Commissioners of Blount is authorized by law to pay a claim for medical services for an employee of the County, who was injured while performing his duties in connection with road building or maintenance, as such employee.

I am of the opinion that your inquiry should be answered in the negative. Counties acting in their public capacity and as auxiliaries of the State are not on common law principles subject to liability in tort, and can be required to answer to such liability only by virtue of its imposition by

statute or Constitution—*Jones et al. v. Jefferson County*. 206 Ala. 13, 39 So. 174. Counties are not liable for injury to its employees.—*Biennial Report of Attorney General*, 1928-1930, pp. 310, 265. See also *Hamilton v. Jefferson County*, 96 So. p. 628, 209 Ala. 517.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 13, 1935

Hon. Chas. W. Lee,
State Comptroller.
Capitol.

Garnishments—Costs of successive garnishments should be taxed as part of the costs of the original case.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 3, 1935, which reads as follows:

"In 1915, the Legislature passed a local law (page 231, Acts 1915) creating the Birmingham Municipal Court, 1st Division.

"Under this law, has the Clerk of said Court, the authority to issue Writs of Garnishment or Attachments, the second or third time in cases where the writs had been issued immediately following the original judgment and proper return has been made in the first instance?

"If said Clerk has authority to issue said Writs of Garnishment, the second or third time, should not the Clerk docket all subsequent proceedings as separate and new cases after a complete activity on the first or original case, necessitating in any subsequent proceeding the securing of a new judgment and charge the fees or cost that would go with each separate case? Said fees or cost has no reference to Trial Tax, because there is no Trial Tax in said cases. The only fees in said cases belongs to the official or county.

"If the Clerk is required to docket all subsequent proceedings as separate and new cases and charge the fees that would go with each (Trial Tax not excluded) separate case, should not the Clerk of said Court be held liable for the costs lost to the County or officials for not having handled any such proceedings or cases?"

I am of the opinion that your first inquiry should be answered in the affirmative.

Under Section 7 of Local Act under consideration, the clerk of the Birmingham Municipal Court, has the authority to issue all processes of said Court returnable to his Division except warrants of arrests and writs of commitment. Garnishment proceedings are instituted under the authority of Chapter 298 (Sections 8051 and 8093) Code of 1923. There is no provision of law limiting the number of writs of garnishment that may be issued. There may be more than one garnishee or the same party may be made garnishee a number of times in the same suit. However, this process should not be abused.

In answer to your second inquiry, I am of the opinion that the costs of issuing and executing each writ of garnishment should be taxed as part of the costs of the original case. This office has ruled garnishment proceedings are purely ancillary to the main suit and are not to be considered as separate cases.—**Opinion of Attorney General to State Comptroller on October 16, 1933.**

In answer to your third inquiry. I am of the opinion that in the event the clerk failed to tax the proper costs, he would be liable to the parties to whom they would accrue if such were the cause of said costs not being collected.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 13, 1935

Hon. C. P. Holman,
Tax Collector, Escambia County,
Brewton, Alabama.

Taxation—Tax Collector authorized to consider as real property fixtures, removal of which would materially damage realty.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of June 4, 1935, in which you request my opinion as follows:

"Kindly advise me that where a concern owns real estate and personal property, but the personal property consists of machinery which is bolted or fastened to a wood or concrete floor, has failed to pay their taxes. The law required that where there is enough personal property to pay the taxes, to dispose of it first. Can I remove the machinery which is bolted to the floor, and sell for taxes or will I have to treat it all as real estate and advertise and sell as same?"

In reply I wish to advise that if this property can be treated as a fixture, then in my opinion it should be advertised and sold as real property. This question, however, is one of mixed law and fact and the answer to your question must necessarily turn upon whether or not the property in question is properly classified as a fixture. Your letter does not set out the exact character of the property in question, but our Supreme Court has set down certain rules, the application of which to your problem will answer the question you asked.

In the case of *Langston v. State*, 11 So. 334, 96 Ala. 44, the Court said:

"The true criterion of a fixture is the united application of these requisites: (1) Actual annexation to the realty or something appurtenant thereto; (2) application to the use or purpose to which that part of the realty with which it is connected is appropriated; (3) the intention of the party making the annexation to make a permanent accession to the freehold."

The Supreme Court has defined a fixture in the case of *Capital City Insurance Co. vs. Caldwell*, 10 So. 355, 95 Ala. 77, as follows:

"A fixture is anything fixed or attached to a building, and used in connection with it, movable or immovable. Whenever the appendage is of such a nature that it is not part and parcel of the building, but may be removed without injury to the building, then it is a movable fixture, and does not pass with a conveyance of the freehold. If, however, it be so connected with the building as that it cannot be severed from it without injury to the building, then it is part of the realty, and passes with the conveyance of the soil."

And in the case of *Grubbs vs. Hawes*, 56 So. 227, 173 Ala. 383:

"The intention with which a chattel is attached to the realty is of great importance in determining whether it has become a fixture."

Further, in the case of *Barbour Plumbing, Heating & Electric Co. vs. Ewing*, 77 So. 430; 16 Ala. App. 280; 201 Ala. 237:

"Where there is actual annexation of personalty to realty, application thereof to the use to which the realty is appropriated, and the parties intend a permanent accession to the freehold, the chattel becomes real estate."

I wish to further cite an opinion rendered on March 7, 1934, by the Attorney General and addressed to Hon. Lacey Edmundson, Deputy Tax Assessor, Birmingham, copy of which opinion I herewith enclose.

In my opinion if the removal of the property in question would materially damage the realty, then the said property should be considered as realty and sold as such under authority of Section 3067 of the Code of 1923, the last sentence of which reads as follows:

"The failure of the tax collector to so exhaust such personal property shall not invalidate the sale of any real estate."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 14, 1935

Hon. J. B. Hilliard,
Clerk of the Circuit Court,
Troy, Alabama.

Witness subpoenaed in more than two cases, set for same date, may claim attendance in two cases; after attendance proved in one case, witness must elect from remaining cases one in which he will prove his attendance.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your request for an opinion dated June 4, 1935. You asked in substance for a construction of Section 3770 of the Code of Alabama, 1923, which has reference to witness fees in instances where the witness is summoned to testify in more than one case set on the same date.

This identical question has been decided by this office and I refer you to Biennial Reports of the Attorney General, 1926-28, pages 60 and 306, which opinion holds as follows:

"The writer construe the above mentioned section to provide that a witness may claim fees in more than one case, providing he is detained or required to attend the other case after the one he elected to prove his attendance in, has been disposed of. The case may be said and same reasoning applied if he is subpoenaed in more than two cases. In each instance, however, after having proved attendance in one case should he be required to attend, he must make an election from the remaining cases to which he will prove his attendance.

"If the case in which the witness elects to claim his fees is not disposed of prior to the other cases, then he would not be entitled to claim fees in the other cases, for the reason that he was not detained or required to attend the other cases. The same reasoning may be applied where there are more than two cases."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 17, 1935

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Elmore County, Ala.

Commissioners Court can legally appropriate money to pay salary of inspector of drainage or sanitation, said salary to be paid direct to said supervisor.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of March 8, 1935, which is as follows:

"Please advise us if Commissioners Court can legally appropriate money to pay the salary of an Inspector or supervisor of drainage or sanitation.

"If so, should the money be paid direct to the supervisor, or should it be paid to the Health Department?"

I am of the opinion that the Court of County Commissioners can legally appropriate money to pay the salary of an inspector or supervisor of drainage or sanitation, and that said salary shall be paid direct to said supervisor. I refer you to subsections 19 and 20 of Section 6733, Code of Alabama, 1923, which are as follows:

"19. To expend money for the purpose of improving the sanitary conditions of their counties by laying trunk lines of sewers and constructing sewage disposal plants in localities contiguous to thickly populated communities and to prescribe the terms on which the owners of houses or householders may connect with such lines of sewers; but no such lines of sewers shall be laid without the written approval of the executive officer of the state board of health, such approval to be based on the belief that the laying of any proposed line will materially improve health conditions."

"20. To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants when requested so to do by the state board of health."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1935

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Jury Clerk who has performed duties of office but failed to take the oath as required in Acts 1931, p. 55., is entitled to compensation for services as a de facto officer.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of April 22, 1935, which is as follows:

"The Jury Commission of this County appointed and used a clerk other than the Circuit Clerk. This clerk also failed to file the oath and have recorded as provided in Acts 1931, page 36. Please advise me whether the Commissioners Court may legally pay this clerk for her services."

I am of the opinion that the clerk appointed under the provisions of Act No. 47, General Acts 1931, p. 55, and who has performed the duties of said office is entitled to compensation therefor even though having failed to take the prescribed oath of office. Such an officer, in my opinion, is a de facto officer and is entitled to compensation as such.—**Opinions of Attorney General, 1928-1930, pp. 114 and 954.**

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 21, 1935

Mrs. W. Lee Stanley,
Clerk of Circuit Court,
Colbert County,
Tuscumbia, Alabama.

In cases arising under Chapter 157, Code of Alabama, 1923, no costs can be taxed.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of April 23, 1935 in which you request my opinion as follows:

"Please advise me if the State witnesses in the Circuit Court in Equity are entitled to be paid from the County Treasury for their attendance as such witnesses in said Court in the matter of Juvenile proceedings appealed from the Juvenile Court of Colbert County.

"The case involved the right of the Child Welfare Department to take custody of children who are alleged to be in improper surroundings. The issue was decided in favor of the State."

I take it that the case you refer to originated under Chapter 157, Code of Alabama, 1923, Volume 2, page 455. On this presumption, I am calling your attention to the latter clause in Section 4492, Code of Alabama, 1923, which section is a part of Chapter 157, supra. This paragraph of said section is as follows:

" * * * There shall be no costs of any kind whatever taxed in cases arising under this Chapter. * * * "

Biennial Report of Attorney General 1930-32, p. 85.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1935

Honorable Chas. W. Lee,
State Comptroller,
Capitol.

Court of County Commissioners without authority to authorize payment per diem and mileage over and above their regular compensation and are likewise without authority to order such payments made out of the Road and Bridge Fund of the County.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of June 4, 1935, in which you request my opinion, as follows:

"The following is an extract from the minutes of the Court of County Commissioners of Lee County, relative to their proposed entry into the C. W. A. program: (Meeting Nov. 20, 1933)

" * * * Realizing that considerable time would have to be devoted to the emergency relief work by the Commissioners should the County enter into the program, it was decided that the Commissioners receive extra compensation for the time given to the relief program. The fol-

lowing resolution was therefore adopted, introduced by Commissioner Whatley, seconded by Commissioner Killigan, and unanimously carried by vote of all the Commissioners:

" 'Whereas, the Court of County Commissioners of Lee County is considering the advisability of joining the Civil Works Administration program by giving employment to hundreds of men now without jobs, and

" 'Whereas, all employed will be used on road projects now under consideration in the different parts of the County, and

" 'Whereas, it is important that each commissioner be in constant touch with the construction in their respective districts, which of necessity will cause each commissioner to devote much of his time to said supervision.

" 'Therefore be it resolved by the Court of County Commissioners that should Lee County enter into the Civil Works Administration program, that for each day the Commissioners devote to the supervision of this work, they be allowed three dollars per day and mileage, over and above their regular compensation now being paid them.

" 'Be it further resolved that said compensation be paid out of the road funds of the county, and be paid separate and apart from their regular compensation.'

"Under authority of the above resolution claims aggregating \$1,272.16 were filed by the several Commissioners and were allowed by the Court, from December 1933, through March 1934, all of which was in addition to their regular per diem and mileage for general road supervision, etc.

"Please advise me whether or not the above claims are a legal charge against the County, and if so, whether or not they should have been paid from the Road Funds."

In reply I beg to advise that in my opinion there is no authority for payment of the claims of the County Commissioners arising as set out in the foregoing resolution.

The compensation of members of the Courts of the County Commissioners is fixed by Section 6771 of the Code as amended by Act No. 669, approved July 31, 1931, Acts 1931, page 805.

Almost the particular question was presented to the Supreme Court in *Weaver v. Tidwell*, County Treasurer, 153, So. page 218, and the court held thereon as follows:

"The main question presented is whether or not the Commissioners Court in making the claims in question, conceded to be valid and payable out of the General Fund of the County, had the authority to shift

said claim against the General Fund to a valid charge against the Special Road and Bridge Fund created from the County's share of the gasoline tax as provided by General Acts 1931, page 458." The court after stating the purpose for which the gasoline fund is to be used stated:

" 'Section 7236 of the Code of 1923 provides for compensation of the Probate Judges for services rendered in connection with roads to be paid out of the County Treasury',

"meaning, of course, out of the General Fund, and in Section 6771 as amended by the General Act of 1931, page 305, likewise provides for the compensation of commissioners.

"True, Sections 1347 and 6754 of the Code of 1923 give the Commissioners Court quite general powers, but that does not give it the power to direct the funds arising under the General Act of 1931, page 458 to the payment of claims against the General Fund."

Section 6771 as amended by the 1931 Act provides the compensation of the Court of County Commissioners. It is my opinion that there is no authority vested in the Commissioners to authorize the payment to themselves of additional compensation. The powers of the Commissioners Court are strictly statutory and the statute fixing their salary and requiring it to be paid out of the General Fund prohibits the court either from increasing its salary or authorizing its payment out of any other fund.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 24, 1935

Hon. Gaston Scott,
President, Highway Commission,
Capitol.

Highway—Width of road or street acquired by prescription, by county or city, dependent upon character of user, is the width as used at the end of the prescriptive period.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of June 10, 1935, in which you request my opinion as follows:

"A road or street as established by the Board of Revenue or Court of County Commissioners, or by proper city authorities, is used over a period of years as a road or street without ever having obtained a deed

to the land used for said road or street and no objection has been raised by the property owners over whose land this road or street was built.

"I have referred to an opinion written by Assistant Attorney General Screws to Mr. F. G. Marquis, Right-Of-Way Agent of the State Highway Department, which states as follows:

" 'Highway—a public highway may be established by legal court proceedings, by dedication, or by prescription.'

"The above mentioned opinion did not state what would be the width of the road obtained by prescription or dedication.

"Will you please advise, under such circumstances, the width of road over which the county or city would have authority or if they would have any legal authority at all."

In reply, wish to advise that in my opinion the width of the road or street over which the county or city would have authority would be the width of such road or street as used at the end of the prescription period, as measured by the character of the user. The easement cannot be broader than the user. I refer you to the case of **Western Railway of Alabama vs. Alabama Grand Trunk Railroad Company**, 96 Ala., page 272; 11 So. 483, 17 L. R. A. 474, wherein the Court says:

"It is immaterial to inquire as to the width of the road at the beginning of the user, the rule of law being that the established width of the public highway acquired by twenty years' user is the width of such highway as used at the end of that time.—*Hart v. Trustee, etc.*, 15 Ind. 226; *Eplar v. Winon*, 5 Ind. 459."

I further refer you to *Elliott on Roads*, p. 283, et seq. The three modes known to the law for fixing the width or boundaries of a road are: By express dedication, by judgment of the Court in legal proceedings under the right of eminent domain, and, as in this case, where the right to the way depends solely upon user. The width of the way and the extent of servitude are measured by the character of the user.

Again in 18 *Corpus Juris*, p. 113:

"Where the right to a highway depends solely upon the user by the public, its width and the extent of the servitude imposed on the land are measured and determined by the character and extent of the user, for the easement cannot upon principle or authority be broader than the user."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 24, 1935

Hon. R. Casper Beverly,
Sheriff, Randolph County,
Wedowee, Alabama.

Where execution is placed in the hands of the Sheriff, but before actual levy is made, defendant pays the judgment to the Clerk, under Section 7259, of the Code the sheriff is not entitled to his commissions on such execution.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of sometime ago in which you state:

"Suit was filed in the Inferior Court of Randolph County, Alabama, by Mr. A as Plaintiff, who resides in Randolph County, against Mr. B, who resides in another county; the same was for a tortious action:

"The Summons and Complaint was duly and legally served upon Mr. B; the case was set down for trial and Judgment was entered for the Plaintiff. After the elapse of 30 days execution was placed in the writers hands, as Sheriff of Randolph County, Alabama, the Defendant has property in Randolph County, Alabama, the writer as Sheriff of Randolph County, Alabama, notified the Defendant that he had an execution duly and legally issued by the proper authorities and was going to make a levy of the same:

"Before the levy was made, the Defendant, Mr. B, see the Plaintiff and pays off the judgment and the Court cost accrued; the Judgment being settled for the sum of \$200.00 and cost paid in the amount of \$14.56, however, this did not include the cost or commission of the writer or Sheriff on the \$200.00:

"The question is, 'Is the Sheriff entitled to his commission upon the amount paid to the Clerk in satisfaction of the Judgment in this cause as the execution has been placed in his hands; or would the payment of the Judgment and cost direct to the Clerk prevent the Sheriff from any commission or cost upon the execution?' "

In reply, I call your attention to Section 7259 of the Code, which states:

"7259. Sheriff's fees, when due.—Sheriffs and coroners are not entitled to full commissions until after actual levy of execution on property of the defendant, and the money made or paid to the plaintiff in execution and then only on the amount actually collected or paid."

Under this provision of the Code, your not having made actual levy of execution, it appears that you are not entitled to the commissions on the judgment which was paid directly to the clerk.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1935

Dr. D. S. Lightcap, President,
Shelby County Board of Education,
Columbiana, Alabama.

School trustees must be selected from persons nominated by patrons of the school.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of May 10, 1935, which is as follows:

"Will you kindly give me your construction on Section 133 of the 1927 School Code of Alabama.

"This section provides that the County Board of Education shall appoint three trustees for each school from six persons nominated by the patrons of said school. Are trustees who have been appointed by the County Board of Education for a County High School, without any nomination of the patrons of a school, lawfully holding office, and vested with the powers of school trustees?

"Are the acts of such trustees lawful and binding when in pursuant to Section 180 of said Code, such Board of School Trustees refused to accept a teacher, duly elected by the County Board of Education."

Section 133 of the 1927 School Code, to which you refer in your letter, is as follows:

"133. Trustees, How Selected.—The County Board of Education shall appoint for every school in the County from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the County Board of Education, through the County Superintendent of Education from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school."

By an Act of the 1931 Legislature, it was provided that the trustees be selected in a manner different from that provided for in Section 133 of the 1927 School Code. The first section of the said 1931 Act (Acts 1931, p. 672) is as follows:

"Section 1. That on the first Saturday in May, 1932, and every two years thereafter, three school trustees shall be elected for each school in every county by the patrons of the school. The county superintendent of education shall appoint three managers to hold the elec-

tion at each school who shall conduct the election in accordance with regulations prepared by the county superintendent of education and approved by the county board of education. The results of the election shall be reported to the county superintendent of education on a certificate signed by the managers of the election, provided, however that this shall not apply to incorporated cities or towns having city or town Boards of Education."

This office in an opinion rendered to **Lloyd Woodruff, Superintendent of Education of Butler County, on September 15, 1932**, held said 1931 Act to be unconstitutional. The opinion, of course, of this office on a matter of that kind, does not of itself make the Act unconstitutional as in the last analysis that is a prerogative only of the highest court of this State. But, in my opinion, it matters not whether trustees are selected under Section 133 of the Alabama School Code or under the 1931 Act, the patrons of the school must necessarily have some part in the selection of the trustees. Under the 1927 Code, it is true that the County Board of Education appoints three trustees for each school in the county, nevertheless their appointments must be made from the six names nominated by the patrons of the school. Under the 1931 Act the patrons of the school have full and complete charge of the selection of trustees. I am, therefore, of the opinion that, under facts set out in your letter, the trustees have not been selected in accordance with the manner provided by law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 28, 1935

Hon. S. P. Poyner,
Judge of Probate,
Dothan, Alabama.

The number of names required on a petition as provided in Section 2366, Code of Alabama, 1923, must be computed upon the number of inhabitants of such city.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of June 17, 1935, which is as follows:

"Request is hereby made for an interpretation of Section 2366 of the 1923 Code of Alabama, which says in part, as follows:

'Said statement shall be accompanied by a petition signed by at least one person for every 100 inhabitants of said City who shall be qualified to vote at said coming election, and, etc.'

"Please clarify the ambiguity by advising if the person spoken of must be a qualified voter, and whether the 100 inhabitants as mentioned must be qualified to vote.

"In other words, a City of the population of 16,000 has a voting strength of 2500. Is it required under the statute that there shall be 25 names on said petition, who shall be qualified electors, and which is one elector for each 100 inhabitants who are qualified to vote; or whether there shall be 160 names, which would be one for each 100 inhabitants therefor whether they are qualified to vote or not?"

In my opinion the petition called for in Section 2366, Code of Alabama, 1923, must be signed by one person for every one hundred inhabitants of said city, and only those persons who are qualified to vote in the coming election are qualified to place their names on said petition. In other words, the number of names which it is necessary to have signed to such a petition shall be computed or based upon the number of inhabitants of the city, while the qualifications of those persons whose names are to appear on said petition are based on the right to vote in the coming election. This construction is necessary in order to give a meaning to all of the words used in said section. In construing a statute it cannot be assumed that the Legislature inserted needlessly certain words. If it had been the intention of the Legislature to fix the method of determining the number of names which are to be signed to such a petition on the number of qualified voters in said city, the word "inhabitants" could have been left out entirely. But inasmuch as the word "inhabitants" is inserted in said provision, in my judgment, it clearly evidences an intention on the part of the Legislature to have the number of persons who must sign the petition computed on the number of inhabitants of said city and not upon the number of persons qualified to vote in the coming election.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 28, 1935

Hon. M. B. Kirkpatrick, M. D.,
Coroner, Montgomery County,
Montgomery, Alabama.

Coroner—not duty of Coroner under Section 4 Acts 1931, p. 195, to personally collect fees due his office.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of June 17, 1935, in which you request an opinion construing Section 4, Acts 1931, page 195, as to whether under such Section there

is a duty imposed on the Coroner of Montgomery County to personally collect the fees and compensations belonging to or pertaining to his office.

It is my opinion that it is not the Coroner's duty to personally collect the fees due his office. Section 3751 of the Code of Alabama lists the fees to which the Coroner is entitled. Your attention is called to Section 3752, Code of 1923, which provides for the method of collection of such fees, which is as follows:

"Fees for holding inquest shall be paid out of the county treasury, when the inquest has been held under the order of a judge of a court of record or circuit or county solicitor and in the opinion of the court of county commissioners or board of revenue, the inquest should have been held; and such fees must also be certified by the coroner to the clerk of the circuit court of the county, and **must be taxed as costs against any person who is convicted for killing the person on whose body the inquest was held, and be collected like other costs in criminal cases;** and, when collected in cases in which the county has paid the same, shall be paid to the county treasurer for the use of the county; and in other cases to the coroner. No fees shall be paid for an inquest when it is publicly known before the jury is summoned who caused the death of the deceased, or when the slayer has been arrested for the homicide; but in such case, if the immediate cause of the death is uncertain, a physician or surgeon may be summoned to make post mortem examination, who shall give his opinion in writing as to the cause of the death, which must be returned by the coroner as inquests are returned by him, and such coroner, physician or surgeon shall be entitled to the same fee and mileage, to be paid in the same manner as for attending an inquest; such fees as accrued to coroners for services rendered by him in discharging duties of sheriff, **must be taxed, collected and paid in the same manner that sheriffs' fees for like services are taxed, collected, and paid.**"

As you see, this Section in simplest terms, provides that the fees set out Section 3751, supra, should be collected as are other costs in criminal cases, i. e. taxed against the person convicted of the offense. However, where in coroner performs the duties of a sheriff, such fees are to be collected as are sheriff's fees for like services, i. e., taxed as costs under Section 3750 of the Code of 1923.

Nowhere is it said nor can it be inferred that it is the duty of the coroner to act as a Collector of Fees in addition to his other duties.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 1, 1935

Hon. B. L. Malone,
Judge of Probate,
Decatur, Morgan County, Alabama.

Mortgages executed to and filed by the Alabama Rural Rehabilitation Corporation not subject to the mortgage registry tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 27th in which you state:

"In accordance with your suggestion over the telephone this afternoon. I am writing to ascertain if mortgage tax is due on mortgages to the Alabama Rural Rehabilitation Corporation."

I beg to advise that in my opinion mortgages to the Alabama Rural Rehabilitation Corporation are not subject to the mortgage privilege tax, the said corporation being organized as a part of the Federal Relief Work in the State, the funds being supplied entirely by the United States Government and no profits inuring to the benefit of any private individual.

While the facts are not exactly the same, I am of the opinion that the case of Wiseman v. Dyess, 72 S. W. (2d) p. 517 (Ark.) expresses the general principal and under the reasoning in this case, mortgages to the Alabama Rural Rehabilitation Corporation are not taxable.

The opinion under date of February 19, 1935 to Hon. S. G. Johnson, Judge of Probate of Lamar County, is hereby withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 3, 1935

Hon. J. Proctor Smith, Chairman Pro Tem.,
Board of Commissioners of Madison County.
Huntsville, Alabama.

County can legally appropriate money to build a market house for the purpose of promoting agriculture in Madison County.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of June 24, 1935, which is as follows:

"Madison County has agreed to go in with the City on a fifty-fifty basis, buy a lot and build a Market-House for the use of the farmers of Madison County in which to sell their produce, subject to the approval of the Attorney General, as to the right of the County to spend money for this purpose. We notice that some other Counties are doing this,

but they may have special legislation on the subject. We want to be protected in the event we go into this because it will probably cost from \$5000.00 to \$6000.00."

The final determination of this question addresses itself to the sound discretion of your body.

Subsection 23 of Section 6755, Code of Alabama, 1923, as amended by an Act approved July 31, 1931 (General Acts 1931, p. 759) provides as follows:

"23. To set aside, appropriate and use county funds or revenues for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

I am of the opinion that if, in the judgment of the Board of Commissioners of your County, it is deemed advisable and to the best interest of the agricultural development of Madison County that a market house be built, that you can legally appropriate money for that purpose.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 5, 1935

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

1. Deed filing tax—required in the event of an assignment of the lease.

2. Deed filing tax—none required on option.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of June 13, 1935, in which you request my opinion, first, as to whether a lease assigned by the leasee to a third party carries a tax the same as the original lease, and, second, whether an option to purchase lands bears a deed tax.

This office has heretofore held that the amount of deed filing tax is based on the interest conveyed. Biennial Report of Attorney General 1926-

1928, pages 42 and 49, and Biennial Report of Attorney General 1932-34, page 149.

It is my opinion that the assignment of a lease being as much a conveyance of interest as the original lease itself, should bear a tax to the extent of such assignment; to hold otherwise would be violative of the distinct purpose of Section 21 1-2 of Act 163 of the Acts of 1927 (Acts of 1927, p. 163).

In answer to your second question, will say that an option to purchase lands bears no deed tax. I am herewith enclosing an opinion issued by this office on February 12, 1930 to the Judge of Probate of Walker County, Jasper, Alabama, which opinion, in my judgment, answers your question.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 5, 1935

Hon. Theo Hurt, Clerk,
Circuit Court of Perry County,
Marion, Alabama.

Clerks of the various courts of Alabama are entitled to five percent commissions for remitting to State, fines assessed for violation of game and fish laws.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 22nd in which you request my opinion as follows:

"Please advise me if I, as Clerk of the Circuit Court am entitled to commission of five percent on fines collected for any violation of the Game and Fish Laws.

"I refer you to 'An Act to provide compensation to Clerks and Registers for the collection of any sum for the State of Alabama,' General Acts of Alabama, 1931, page 669."

It is my opinion you are entitled to five percent commission for remitting fines collected for violations of the Alabama Game and Fish Law which you are required to remit to the Commission of Game and Fisheries, who in turn, remits to the State Treasurer. This is authorized by an Act approved July 28, 1931, (General Acts 1931, p. 669) which is as follows:

"That the Clerks and Registers of the several Circuit Courts of the State of Alabama shall receive five per cent of any sum or sums collected

by such Clerk or Register for the State of Alabama, as compensation for the collection and remittance of the same, the said percentage to be deducted by such Clerk or Register making the collection from such sum or sums collected."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 5, 1935

Hon. G. H. Howard,
Probate Judge of Elmore County,
Wetumpka, Alabama.

Where the sanity of defendant who is charged with a capital offense is brought to the knowledge of the Presiding Judge and he orders an investigation under the Act approved July 17, 1933, General Acts 1933, Page 144, there is no provision made for paying the expense of such examination.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 4, 1935, in which you request my opinion as follows:

"In this county a defendant charged with murder plead not guilty by reason of insanity. The State or prosecution ordered a physician to examine the defendant in order to determine whether or not he was sane.

"The physician making the examination has filed claim against the county for his services. Please advise us if the Commissioners Court can legally pay this claim."

I presume the proceedings you refer to were under an Act of the Legislature approved April 17, 1933, General Acts 1933, page 144. This Act sets out the method of procedure where the sanity of a person indicted for a capital offense has been brought to the knowledge or attention of the Presiding Judge, but makes no provision for expenses of such an inquisition except the care of the defendant in case he is adjudged of unsound mind.

I have examined the general laws for authority to pay for this service, but if there is a provision that would cover this, I have failed to find it. I have, therefore, come to the conclusion there is none.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 5, 1935

Hon. Hamp Draper,
Associate Member,
Board of Administration,
State Capitol,
Montgomery, Alabama.

Under present law, defendants on whom the death sentence is imposed should be received by the Warden at Kilby even though an appeal has been taken and execution suspended.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of June 7, 1935, in which you state:

"In a great many instances the judges throughout the state are issuing orders to the sheriffs of their respective counties on convictions in a great many cases of murder in the first degree, where the defendants are given death sentences, to send these men to Kilby, and in practically every case the defendant has given notice of an appeal and the judge has issued a stay.

"I would like to have your official opinion as to whether or not my department should take these men before the case is finally disposed of by the Supreme Court."

The law provides that within ten days after the death sentence has been pronounced, the Clerk of the Court in which the conviction was had, must issue a warrant, and the sheriff must immediately upon receipt of this warrant, transport the condemned person to Kilby prison and deliver such person to the warden. (Sections 5311 and 5312 Code of 1923).

There is no provision for the condemned person to remain in the county jail during appeal, and therefore the warden at Kilby is required to receive such person even though the case has been appealed and execution suspended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 6, 1935

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

A tenant in common is not entitled to effect a partial redemption of a given tract of land in which he is interested, but must pay the

whole amount of tax properly due on such tract and enforce his lien for contribution from other co-tenants.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of June 4th, which is as follows:

"On November 13, 1931, certain property in this county assessed in the name of Mrs. E. A. Morris, was sold to the State for 1930 taxes. The property was assessed as 'an undivided one-fourth interest' in certain property, and also 'an undivided one-half interest' in certain property.

"This property was originally owned by Mr. A. E. Fields, and under his will, his son, Dr. E. T. Fields of this city, inherited an undivided one-fourth interest in the property of his father. Dr. Fields has filed a petition to redeem all of the property assessed as 'an undivided one-fourth interest' and also one-half interest in all the property assessed as 'an undivided one-half interest,' claiming the right to redeem under the will of his father. In other words, he is the owner of all of the property assessed by Mrs. Morris, except as to one-half of the assessed 'one-half interest.'

"It is my opinion that he would not be allowed to redeem the entire assessment, because he is not the owner of the entire interest in the assessment, but is the owner of all the property assessed as 'one-fourth interest' and only one-half of the property assessed as to 'one-half interest.'

"Please advise as to how Dr. Fields may be permitted to redeem his property from this sale."

Section 3109 of the Code provides who shall be entitled to redeem property sold to the State for taxes and includes, "Any person having an interest therein, or any part thereof, legal or equitable, in severalty or as tenant in common." This Section further provides; "And such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner."

Section 3127 of the Code provides:

Section 3127. Any mortgagee, lienholder, other creditor or any person having an interest, but not the legal title, shall have a lien on the lands for the amount expended by him in effecting such redemption and if such redemption is by a tenant in common, he shall have a lien on the interest of his co-tenant."

Construing these sections together, as they must be, it clearly appears that it was the legislative intention that a tenant in common, such as is referred to in your letter, should not be entitled to effect a partial redemp-

tion of a given tract of land in which he is interested, by paying a part of the amount due thereon in proportion to his interest therein, but that by these provisions he is required to pay the whole amount due on the particular tract in which he is interested, and rely upon enforcement of the lien on the land given him to force contribution from his co-tenants.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 6, 1935

Hon. F. B. Thompson,
Judge of Probate, Clay County,
Ashland, Alabama.

1. Costs and Fees—Probate Judge allowed certain fees under Section 7285, said Section not being repealed by Acts 1931, page 280.

2. Guardian Ad Litem—Guardian Ad Litem necessary for annual settlement of guardian of non compos mentis, compensation governed by Section 5856 Code of 1923.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of June 7, 1935, requesting my opinion as follows:

"I have examined your opinion relative to the fees of the Judge of Probate in regard to War Veterans, etc., as found on page 60 of the Attorney Generals Biennial Report October 1, 1932, to September 1st, 1934.

"I write to ask if the Judge of Probate is not allowed the following fees under Section 7285 of the Code of 1923, as found on page 598 of Volume 3 Civil Code of Alabama 1923:

"1. Examining, stating and passing the accounts of Executors, Administrators and Guardians for final or partial settlement and appointing a day for hearing—\$1.00. Examining each voucher 10c—Making a decree on annual or partial settlement and order to record same—\$1.50—Making each decree on final settlement—.50c.

"2. Under the act of 1931 should a Guardian Ad Litem be appointed for an annual settlement of a guardian of a non compos mentis, and if so, can such Guardian ad Litem be paid out of funds of said estate.

"In other words, does the repeal of Sections 8120 et seq., in the Code of Alabama Volume 3 by the act approved June 6, 1931 repeal the General Statutes as to cost and fees in Section 7285 hereinabove referred to in force."

In reply, I wish to advise that in my opinion fees of Probate Judge set out in Section 7285 of the Code of 1923 and made the subject of your first inquiry were not affected by the Acts of 1931, page 280 (No. 240). It is, therefore, my opinion that you as Judge of Probate are allowed the fees enumerated in your first inquiry.

In reply to your second inquiry, I wish to advise that in my opinion, under Sections 8202 and 8208 of the Code of 1923 a Guardian Ad Litem should be appointed for an annual settlement of a guardian of a non compos mentis and that such Guardian Ad Litem be paid in accordance with Section 5858 of the Code of 1923, which provides for the payment of the fees of said Guardian Ad Litem.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 6, 1935

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

1. Mortgage on boat plying Alabama waters, should be recorded in "home" county of owner.
2. In case of non-resident, unless permanent situs acquired in one county, proper procedure is to record in all counties in which it operates.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 18, 1935, stating:

"There is a boat and barge plying the Tennessee River from Chattanooga, Tenn. to Pickwick Dam. A citizen of Bridgeport, Ala. has a mortgage on this boat and barge and is undecided as to what county to have this mortgage recorded in. As I understood it the headquarters of this boat are in Chattanooga, but I am not sure. Please advise as to what county this mortgage should be recorded in."

The general rule is that mortgages of personal property are recorded in the County of mortgagor's residence. Ship Companies usually have a

home place or place of registry as it is termed. I presume from your letter that Chattanooga is such place of registry, and the mortgage should be recorded there. I cannot advise you of the Tennessee mortgage recording laws.

If the boats are so continuously in Alabama as to have acquired a permanent situs here, the mortgage should be recorded in the county of such situs.

If there is doubt of such fact, the part of caution would be record the instrument in each county in which the boat operates. There would be a privilege tax payable in the county where first recorded.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 8, 1935

Hon. R. L. Leonard,
Treasurer, Walker County,
Jasper, Alabama.

Court of County Commissioners—Services of attorney and court costs in law suits against Chairman of Court of County Commissioners in official capacity are legal claims against the county.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of June 17, 1935, requesting my opinion as follows:

"In Walker County one Raymond Faught took the School census and his compensation was fixed at \$151.45, and approved by the County Board of Education of said Walker County, and ordered paid out of the Treasury by the County as provided by Section 122 of the School Code of 1927. A warrant was issued for payment of his services, and the chairman, J. M. Gray, of the County Commission refused to sign the warrant, taking the position that the warrant should be paid out of the Public School funds as provided by Section 199 of the School Code of 1927. After the case was decided against the Chairman, Mr. Gray, in the Circuit Court the County Commission then by resolution authorized an appeal in the case to the Supreme Court in order to test the question and by said resolution agreed to take care of the expense including the attorney's fee. On June 6, 1935, the Supreme Court affirmed the judgment of the lower court. The Court cost in the Lower Court was by the Circuit Court adjudged against the Chairman, J. M. Gray.

"Pursuant to the resolution by the County Commission to pay the expense of the said litigation the county attorney presented a bill for \$50.00 covering the work in the Circuit Court as well as the work in the Supreme Court. A warrant was issued for this bill in due form and approved by the County Commission and presented to me for payment. Being in doubt as to whether or not I should pay this bill, that is, as to whether or not it is a legal claim against the county I held it up until I could secure an opinion from you. The matter is being held up on this and I should thank you to advise me whether or not this claim for the county attorney as well as other costs in the case constitute a legal claim against the County of Walker."

In reply, I wish to advise that in my opinion the claims referred to in your letter are legal claims against the county. This opinion is based, however, upon the assumption that the attorney referred to in your letter is neither a circuit or county solicitor nor a regularly employed county attorney on a salary basis.

I refer you to Section 5498 of the Code of 1923, Subsection 8, which provides in part as follows:

"But courts of county commissioners or boards of revenue may retain or employ attorneys, when it is deemed advisable or necessary, and the agreed compensation to them may be paid as are claims to grand and petit jurors."

I further refer you to the cases of *Clark v. Eagerton, et al, Commissioners*, 907 Ala. 491 and *Stone, County Treasurer, v. State ex rel Armbrrecht*, 220 Ala. 437.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 8, 1935

Hon. J. M. Lyon,
President of the Board of Revenue,
Shelby County,
Columbiana, Alabama.

Counties are not authorized to use cash balances in bond sinking fund accounts required by law in discounting current claims for materials or equipment furnished the County, reimbursing the sinking fund thereafter by payments from the general fund of amounts

equal to the installments which would have matured on such current claims.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of March 12, 1935 as follows:

"This county has outstanding numerous contracts for the lease or purchase of road machinery etc., which are being paid in monthly installments out of gasoline receipts.

"In some instances these contracts run for a period of three or four years and bear 6% interest, which is added to the monthly claims when paid.

"We have a sinking fund invested for the most part in legally authorized State and municipal bonds, but containing also approximately \$20,000.00 each which we are having some difficulty in investing where it will have the advantage of security of principal and a fair interest return, local banks offering 2½% for only \$4,000.00 or \$5,000.00 of the sum in hand.

"Your opinion is requested as to whether or not we may purchase these monthly claims or warrants against the county out of monies in the sinking fund, reimbursing that fund as the claims fall due with the addition of the 6% interest which these instruments bear.

"As an example of our problem:—We have purchased equipment for one of our districts to the amount of \$5,000.00, making an initial payment of \$600.00, the balance to be paid in monthly installments of \$200.00 represented by certified claims or warrants for that amount plus 6% interest.

"May we purchase these warrants with the money in hand in the sinking fund, reimbursing that fund by payment of the \$200.00 monthly with the addition of the 6% interest?"

I assume that you have reference to a proper sinking fund which is required to be maintained by the county by Section 2294 (60) of the Code. Section 2294 (61) of the Code sets out in some detail the manner in which the sinking funds required to be maintained shall be invested. This Section of the Code provides, among other things:

"All sinking funds provided for the retirement of bonds shall be invested in bonds of such subdivision or in bonds of the United States of America or in bonds of the State of Alabama or in bonds of any County in the State of Alabama or any Municipal Corporation of the State of Alabama, or deposited in bank on interest."

The provision of this statute is mandatory, and does not permit such a use of the monies in the sinking fund account as you refer to in your letter.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 9, 1935

Hon. Ralph L. Jones,
Solicitor,
Monroeville, Alabama.

1. A sheriff is not entitled to collect his search and seizure fees in prohibition cases out of the Fine and Forfeiture Fund of the County when no conviction is obtained.

2. Sheriff's fees provided to be paid by the State Convict Department by Sections 3741, 3667 and 3670 may not be collected from the County Fine and Forfeiture Fund upon failure of the State Convict Department to make payment thereof.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of April 18th, as follows:

"At the request of Mr. J. P. Farish, Sheriff of Monroe County, I am requesting your opinion on the following questions relating to his fees:

"1. Is he entitled to collect his search and seizure fees in prohibition cases out of the fine and forfeiture fund of the County when no conviction is obtained?

"2. Is he entitled to collect his fees for guarding prisoners as provided by Section 3741 of the Code, out of each fund when the defendant is sent to the penitentiary and the convict department fails to pay the same?

"3. Is he generally allowed to collect out of the fine and forfeiture fund of the County all fees to which he is entitled upon conviction, where the defendant is sentenced to the penitentiary and the convict department fails to pay such fees?

"He is not clear on these questions and does not wish any of these items charged back to him as collected wrongfully. I will appreciate your opinion on these items as soon as convenient."

In answer to your question 1, I wish to advise you that the sheriff is not entitled to collect his search and seizure fees in prohibition cases out of the Fine and Forfeiture Fund of the County when no conviction is obtained. **Biennial Report of Attorney General 1928-30, page 655.**

By your questions 2 and 3, I assume that you have reference to these fees which under Sections 3741, 3667 and 3670 of the Code are to be paid as therein provided by the State Convict Department. With regard to the fees there provided to be paid by the State Convict Department, the statutes make very plain the manner in which these fees shall be paid, and should the sheriff fail to collect these fees in the manner provided by these Sections of the Code, he is not entitled to charge them to and have them paid out of the Fine and Forfeiture Fund of the County.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 10, 1935

Hon. W. E. Butler,
Judge of Probate,
Huntsville, Alabama.

Probate Judge entitled to \$5.00 for services rendered in incorporation of towns and fifteen cents per hundred words for recording proceedings.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 10, 1935, in which you state:

"Section 7285 Alabama Code 1923 reads as follows:

'Services rendered in incorporation of towns, under provisions of this Code, to be paid by the Corporation\$5.00'

"In fixing the fee due to me as Judge of Probate for services in connection with the incorporation of a town should there by any additional charge for the recording of the procedure?"

In reply I advise that in my opinion this fee is intended to cover the services of the Probate Judge acting as required by Section 1744 et seq.

I am of the opinion that he is entitled to fifteen cents per one hundred words for recording the proceedings.

Section 7285 provides in part:

"Recording wills, inventories, sale-bills, reports, certificates, transcripts, returns, orders decrees, declarations of incorporation, deeds and all other instruments, and all proceedings required by law to be recorded, and not otherwise provided for, for each hundred words.....15

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 10, 1935

Honorable G. C. Grantham,
Clerk of the Circuit Court,
Geneva, Alabama.

Costs and Fees—Clerk of the County Court entitled to fee of fifteen cents per hundred words for making and certifying transcripts on appeal to the Circuit Court.

Clerk's transcript and certificate fee on appeal from the County Court to the Circuit Court payable out of Convict Fund in the event of conviction and sentence.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated June 15, 1935, as follows:

"Is the Clerk entitled to fee for making transcript in appeal cases from the County Court to the Circuit Court?

"If the Clerk is entitled to his fee for making transcript, is it a charge under Section 3667?"

Your first question must be answered in the affirmative. Section 3839 of the Code of 1923 provides:

"When an appeal is taken under the preceding sections, the clerk of the county court shall make a copy of all the proceedings had in his court, except the subpoenas for witnesses and the appeal bond, certify the same as correct, and hand the transcript, together with the appeal bond, to the clerk of the circuit court, who shall place the same on the trial docket of criminal cases."

Under Section 3739 of the Code of 1923, Clerks of the Circuit Court are entitled to a fee of fifteen cents per hundred words for making transcripts and making certificates thereof; and under Section 3758 are entitled to receive the same fees in the County Court allowed by law for similar service performed in the Circuit Court.

Under these Code sections, the Clerk of the County Court is clearly entitled to the fee provided for making transcripts on appeal of cases from the County Court to the Circuit Court.

Your second inquiry must also be answered in the affirmative. Section 3667 of the Code of 1923 provides, in part, that:

"Whenever a defendant is convicted and sentenced to the penitentiary, there shall be paid out of the Convict Fund, to the extent and in the manner prescribed, for making transcript and certificate thereof, per hundred words, fifteen cents."

Section 3667 is applicable only to felony cases. However, Acts 1927, page 52, Section 3, provides:

"The Courts of County Commissioners, Boards of Revenue, or other like bodies of the several counties of the State, may hereafter, and they are hereby authorized and empowered to, deliver to the State Board of Administration all county convicts heretofore sentenced to hard labor for the county, or who may hereafter be sentenced to hard labor for the county, in like manner as now provided by law for the delivery of State convicts to the State Board of Administration. The State Board of Administration shall receive said county convicts in the same manner as they now receive State convicts, and shall pay to the proper county authorities the items of costs provided in Section 3667 of the Code of Alabama as now provided by law. Provided, however, that where these items of costs have been paid to the proper officers for the convicts now serving their sentence, the same shall not be again paid."

This has the effect of allowing to the Clerk of the County Court a fee for making transcript on appeal from the County Court to the Circuit Court, payable from the Convict Fund, upon the conviction and sentence of a defendant provided the County Governing Body has complied with the above quoted Act of 1927.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

Hon. Wm. W. Hill,
Judge of Probate,
Montgomery, Alabama.

July 11, 1935

Attention Mr. Simon Wampold

When property described in a mortgage is situated in different counties, the Probate Judge, who collects the mortgage tax, is required to pay over to each of the different counties in which the property is situated an amount of taxes proportional to the value of

the property therein as compared to the value of the whole property with this State described in such mortgage.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 1st, in which you state:

"There was filed for record in this office a mortgage from Swift & Company to the First National Bank of Chicago, Commerce Trust Company and Roy C. Osgood, Trustees, on which there was a mortgage tax of \$474.15. Attached to this mortgage is a certificate from the State Tax Commission of Alabama, stating in Section 6 that the amount of tax to be paid for filing said instrument in the State of Alabama is \$474.15, apportioning as follows: Montgomery 55.30%; Dallas County 21.45% and Mobile County 23.25%. Following this, there appears: 'It is therefore ordered that the Judge of Probate of Montgomery County or either of the other said counties in which the property is located in the State of Alabama shall receive said instrument for filing for record upon the payment of the privilege tax of \$474.15.'"

"Does the Probate Judge of Montgomery County pay any portion of this tax to the other counties mentioned or does all of the tax remain with the Probate Judge of Montgomery? It is our contention that according to the Revenue Laws of 1929, Section 124, page 285, Paragraph E, that all the mortgage tax remains in Montgomery County.

"Kindly give us your opinion on this matter promptly and greatly oblige."

In reply, I call to your attention subsection (g) of Schedule 124 of the 1929 Compilation, which provides specifically as follows:

"(g) Of the taxes collected by the probate judge under this section there shall be paid to the county treasurer of the county in which such taxes are collected one-third of the amount collected by him, to be accounted for by him, and the remaining two-thirds of said amount collected, to the State treasury. The probate judge shall receive five per cent of the amount collected by him as compensation for his services in collecting said money, and certifying said instrument, said five to be retained by him out of the money collected by him under this section; but when the property described in said instrument is situated within different counties within this State, then the probate judge who collects said taxes shall pay over the amount due to the county treasury to the county treasurer of each of the different counties in which said property is situated an amount of said taxes that would be in proportion to the value of the property therein as compared to the value of the whole property within this State described in said instrument."

This requires the Probate Judge to distribute the money collected as the counties' share among the various counties.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 11, 1935

Hon. William F. Black,
Acting Director, Transportation Bureau.
Alabama Public Service Commission,
Montgomery, Alabama.

Any person, firm, association or corporation who transports only his own property or any person, firm, association or corporation when transporting only property offered for sale, sold or to be sold by him is not required to obtain a motor carrier permit.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of April 19, 1935, which is as follows:

"We desire an official opinion from you on the question of whether or not a motor carrier operating in the manner hereinafter described is subject to an Act of the Legislature of Alabama approved October 28, 1932 (H. B. 113).

"AB owns and operates a group of retail gasoline distributing stations. AB also owns certain trucks equipped with tanks for carrying gasoline. Shipments of gasoline are made by the CD Company, consigned to AB at a port in the State of Florida. AB accepts delivery of the gasoline, places it on his trucks and proceeds into the State of Alabama, where he distributes it among his retail distributing stations and other filling stations. The facts given indicate that while the gasoline throughout the entire transaction is the property of the CD Company, at the same time AB is wholly responsible for it. In other words, while AB does not actually purchase the gasoline at the port, he is charged with it and any loss, occurring while it is in his possession being transported to the distributing stations is his loss and not the loss of the CD Company. For such loss AB is covered by an appropriate bond.

"Under these circumstances is it your opinion that AB should obtain a motor-carrier permit under the Act referred to. If these facts are not sufficient, will you not let us know so that we may furnish you additional information."

Section 5 of Act No. 159, House Bill No. 113. General Acts 1932, p. 178, provides as follows:

"Section 5. No contract carrier or common carrier shall operate any motor vehicle for hire for the transportation of persons or property upon any public highway in this State without first having obtained a permit therefor from the Judge of Probate of the County in which such carrier resides or has his principal place of business, or, if such carrier is a non-resident of this State, from the Judge of Probate of any County through which he operates or proposes to operate."

It thus appears that in order to determine whether or not the particular operator is required to obtain a permit it must first be determined whether or not such operator is either a contract or common carrier as defined in said Act, supra. Subdivisions (c) and (d) of Section 1 of said Act defined common and contract carriers as follows:

"(c) 'Common carrier' means any operator of a motor vehicle who engages in the motor transportation business for hire as a public employment, provided, however, neither the term 'common carrier,' nor any other provision of this Act, shall be construed to mean or include any motor transportation company or common carrier subject to the provisions of the Alabama Motor Carrier Act of 1931; (d) 'Contract Carrier' means any operator of a motor vehicle who engages in the business of furnishing transportation of persons or property for hire for a particular person or particular persons under a special contract or special contracts, and not for the public. 'Contract carrier' shall not be construed to mean or include: 1. Any farmer, merchant, manufacturer, or any other person, firm, association or corporation who transports only his own property; * * * 4. Any person, firm, association or corporation when transporting only property offered for sale, sold, or to be sold by him."

Under the facts stated in your letter, it is, of course, obvious that the AB Company is not a "common carrier" within the meaning of said Act, and it is my judgment that, under the facts set out in your letter, it is not a "contract carrier" in view of the fact that it is either transporting its own property or transporting property to be sold by it.

I am, therefore, of the opinion that the said AB Company could not be required to obtain a motor carrier permit. This opinion is, of course, based upon the facts set out in your letter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 11, 1935

Hon. Marvin Pearce, Member,
Court of County Commissioners, Marion County,
Winfield, Alabama.

1. Court of County Commissioners, Board of Revenue or like governing body of the County may use the special road and bridge fund for the purpose of securing rights of way for building of public roads and highways in the county.

2. Commissioners Courts, Boards of Revenue or other like Governing Bodies may borrow money in anticipation of said special road and bridge fund.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 26, 1935 in which you request my opinion as follows:

"Can the Board of County Commissioners use what we call general road and bridge funds for the purpose of securing and paying for rights of way for the building of public roads and highways either by the county or state, where the said rights of way is agreeably traded for from the owners or have to be condemned?

"Further, can or may the said boards borrow money in anticipation of the collection of the said road and bridge funds and issue regular county warrants dated ahead and against the said funds when collected in the fall?"

Answering your first inquiry, I am of the opinion that counties are authorized by Section 6755, Code of Alabama 1923, to levy a tax for special county purposes. See subsection 3 of said section, which is as follows:

"3. To levy a general tax, for general, and a special tax, for special county purposes, according to the provisions of this Code.

And where a county has made this levy for roads and bridges of the county, it may use the funds derived from such tax to purchase rights of way or pay for same when such rights of way have been acquired by exercising the rights of eminent domain in condemnation proceedings for the reason that this fund is specifically designated to be used in the construction and maintenance of roads and bridges, and certainly the procuring of a right of way would be a part of the construction.

Answering your second inquiry, I am of the opinion the Court of County Commissioners or Boards of Revenue or like governing body may borrow money in the anticipation of the collection of said road and bridge fund under Section 6776, Code of Alabama, 1923, which is as follows:

"6776. Counties may make temporary loans in anticipation of taxes.— Courts of county commissioners, boards of revenue, or other governing bodies of the counties of this state, for and in behalf of their respective counties, may borrow money in anticipation of the collection of taxes for the year in which such loans are made, and issue certificates or warrants covering such loans."

But in doing this, it must be in accord with Section 6777 of the Code of Alabama, 1923, as amended by an Act approved July 22, 1931, (General Acts 1931, page 639), which is as follows:

"That Section 6777 of the Code of Alabama be amended so as to read as follows: Section 6777: What amount may be borrowed. Any amount borrowed under authority of the preceding section shall not be for a sum greater than one half of the income of said county for the preceding year."

Section 6779 fixes the amount of interest such warrants can bear. This section is as follows:

"6779. Rate of interest—Warrants issued under the provisions hereof shall bear interest at a rate not exceeding eight per cent per annum, and said warrants shall be issued for an amount not less than their face value, and shall be payable on or before December 15th of the current year."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 12, 1935

Hon. F. W. McLane, Clerk,
Circuit Court of Talladega County,
Talladega, Alabama.

Costs and fees—Fee of Circuit Clerk for issuing subpoena for witness to appear before the Grand Jury (Acts 1931, p. 668) not payable out of the fine and forfeiture fund of the county in the event no indictment is returned.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of recent date, requesting my opinion as follows:

"General Acts of 1931 No. 574, page 668, provides for the issuance by the Clerk of the Circuit Court of subpoenas for witnesses to appear before the Grand Jury. Section 2 provides for services performed by this act, the Clerk shall receive the same fees as for issuing other subpoena.

"I wish to know if I as Clerk of the Circuit Court would be entitled to my fees for issuing said subpoenas from the Fine and Forfeiture Fund in cases where no bill is found."

Your inquiry must be answered in the negative. Acts 1931, p. 668, provides:

"Section 1. That it shall be the duty of the Clerk of the Circuit Court in term time or vacation, to issue subpoenas for any necessary witnesses to be and appear before the Grand Jury without application having been made for such witnesses by the Grand Jury.

"Section 2. For the services performed as required by this Act, the Clerk shall receive the same fees as for issuing other subpoenas."

Prior to the enactment of the 1931 Act, quoted supra, Sections 8676-77 of the Code of 1923, governed the issuance of summons for witnesses to appear before the Grand Jury. Section 8676 provides:

"8676. Witnesses and evidence; issue of subpoenas; proceedings against defaulters.—The solicitor, or the foreman of the grand jury, or the clerk of the court, on the application of the grand jury, must issue subpoenas for any witnesses whom they may require to give evidence before them; and if witnesses so summoned fail to attend, the subpoenas must be returned to the court, with the default thereon endorsed, signed by the foreman, and the same proceedings may thereupon be had against them as against defaulting witnesses, the endorsement of the foreman being presumptive evidence of the default."

The obvious purpose of the 1931 Act was to enlarge the powers of the Circuit Clerk to include issuance of summons for witnesses to testify before the grand jury without first having had that body to apply for subpoenas for such witnesses.

Section 2 of the 1931 Act, *supra*, provides that the Circuit Clerk shall receive "the same fees as for issuing other subpoenas," but it did not undertake to alter the conditions under which said fees might be paid from the Fine and Forfeiture Fund of the County.

The law of costs and fees is penal and is strictly construed; and the rule applies to the funds from which said costs and fees may be paid.—See *Dawson etc. v. Matthews, etc.* 105 Ala. 485.

Acts 1927, p. 45, which amended Section 4039 of the Code of 1923, governs the payment of fees of officers from the fine and forfeiture fund. It provides:

"1. That Section 4039 of the Code of 1923 be, and hereby is, amended so as to read as follows to-wit: Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of the State witnesses, the County Treasurer of such county must pay the fees of the officers of the Court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found', or in cases in which the State enters a *nolle prosequi*, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant, unless the payment or distribution of such funds are otherwise provided for—This section shall be held to apply to all fees of officers of the trial court arising on an appeal by the defendant to the Supreme Court or the Court of Appeals, in cases where the Judgment of the trial court is reversed and a new trial allowed, or the defendant ordered discharged. It shall also apply in appealed cases, where the defendant has appealed from a conviction and sentenced to the State Penitentiary, and the conviction is affirmed, to such part of the fees of the officers of the trial court, arising on the appeal, as are not paid from the convict fund under Sections 3667 and 3668 of the Code, an execution for such unpaid part of such fees having first been issued against the defendant and returned 'no property found'. It shall further apply to the fees of the officers of the trial court, arising on an appeal, in cases where the defendant has appealed from a conviction, the punishment fixed being otherwise than imprisonment in the State peni-

tentiary, and the judgment of the trial court is affirmed, provided the defendant be first proved insolvent by the return of execution 'no property found.'"

"3. Provided that no fees of a Circuit Solicitor or trial tax whether heretofore accrued or hereafter accruing, shall be taxed against or paid out of the fine and forfeiture funds of any county."

These provisions of the law had been construed by the Supreme Court in *Kilgore v. Swindle*, 219 Ala. 378, at the time of the enactment of the 1931 Act, quoted supra.

In the *Kilgore* case, the Court had under consideration, among other questions, the right of a sheriff to the payment from the fine and forfeiture fund of the County of his fees for serving subpoenas issued to witnesses to appear before the Grand Jury where no indictment was found.

In speaking to that question, the Court said:

"Looking at the history of Section 4039, it is found that originally 'cases in which defendant is not convicted' was not listed among those wherein officers' fees were payable from the fine and forfeiture fund. This omission was noted in the case of *Bilbro v. Drakeford*, 78 Ala. 319, decided in 1884. The statute was amended at the next session of the Legislature, and appeared as Section 4895 of the Code of 1886.

"It thus appears the Legislature has expressly dealt with omissions from the officers' list of certain cases then listed in favor of state witnesses, and by amendment included cases wherein defendant is 'not convicted' but still omitted these where in there was 'no indictment.'

"Construing these several related sections, we conclude the fee of the sheriff for serving a subpoena on a witness to appear before the grand jury, where no indictment is found, is not a lawful claim against the fine and forfeiture fund."

The Court's decision in that case, in my opinion, is conclusive on the question here dealt with.

In addition, it is a cardinal rule of statutory construction, that "the reenactment of a statute which has been judicially construed is an adoption by the Legislature of that construction." See Ala. and So. Digest, Title, "Statutes" Key No. 225 3-4, where many Alabama authorities are collected and cited in support of the rule.

It is to be presumed that at the time of the enactment of the 1931 Act, supra, the Legislature was aware that the Supreme Court had ruled that the fees of a sheriff for serving subpoenas on witnesses to appear before the grand jury were not payable from the fine and forfeiture fund in cases where no indictment was found; and that this construction by analogy applied with equal force to fees of a Circuit Clerk for issuing subpoenas in such cases. This presumption excludes the inference, if there is in fact

any fair or logical basis for such inference, that the Legislature intended by the passage of Acts 1931, p. 668, to provide for the payment of the clerk's fees for issuing summons in such cases from the fine and forfeiture fund.

It appears that former opinions of this office (Biennial Report of the Attorney General 1932-34, p. 555; Office Edition Book 17, p. 161; Office Edition, Book 16, p. 250), are in conflict with the conclusion of this opinion. To the extent that they so conflict with the above opinion, they are withdrawn and overruled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 12, 1935

Hon. Howard Kirby,
Clerk, Circuit Court,
Gadsden, Alabama.

1. Costs in a Justice's Court collected for a former Justice by his successor in office should be paid direct to the former Justice of the Peace. However, if the costs collected by such Justice of the Peace go to witnesses, this costs should be paid to the Justice of the Peace and by him to the witnesses.

2. Sheriffs and their deputies are entitled, when summoned as a witness in a criminal case, to prove their attendance as other witnesses.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 28, 1935, in which you request my opinion as follows:

"Please write me your opinion on the following matters:

"When I collected money accruing in a Justice Court where the Justice has gone out of office who issued the papers and so forth, should I pay the money to the Ex-Justice or to his successor?

"Whes I collect less thas total amount of costs due in a case and the balance cannot be collected after diligent effort, would the Clerk be entitled to take out his total costs from amount collected and then prorate the remainder?

"Is the Sheriff entitled to prove attendance as a witness in criminal cases if he is not on a salary?"

Answering your first inquiry, if the costs you refer to belong to the justice of the peace who has gone out of office, you should pay this direct to the justice himself for the reason that the fees belong to him individually and should go to him. However, if the costs you refer to are fees other than those of the justice of the peace or constable, such as witness fees, you should pay this to the justice of the peace who is the successor to the justice you refer to and he in turn should pay it to the witnesses; that is, the witness cost that originated in the Justice Court—before it reached the Circuit Court.

Answering your second inquiry, I am enclosing an opinion of this office written to Hon. A. G. Teague, Clerk of the Circuit Court of St. Clair County, dated October 3, 1933, which answers this fully.

Answering your third inquiry, this office held in an opinion to the Hon. B. Cooper, County Treasurer of Marion County, Alabama that the sheriff or his deputy, when duly and properly summoned as a witness in a criminal case, is entitled to his per diem as witness just as other witnesses. **Biennial Report of Attorney General 1930-1932, page 179.** We are of the opinion that the ruling by the Attorney General in the above opinion is correct, that the sheriff or his deputy, when summoned as a witness in a criminal case may, as other witnesses, prove his per diem.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 12, 1935

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Justices of the Peace—General Jurisdiction—Must maintain office
in election precinct in which he was elected or appointed.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of May 22, 1935, in which you request my opinion as follows:

"1. Does a Justice of the peace while actually without his beat, but within his county, have authority to issue a warrant for the arrest of a person charged with a misdemeanor and make the same returnable to the County Court.

"2. Does a justice of the peace, who maintains an office as justice of the peace outside his beat, have authority to do the general act of a justice of the peace?

"3. Where there are two adjoining beats in the same county, and in each beat there are two qualified justices of the peace, but one justice from one of the beats keeps his office in the other beat, where there are already two justices of the peace, what are the limits of the duties and authority of such justice?

"4. Does a justice of the peace who operates a business in a beat other than the one in which he was elected and resides, and operates his office as justice in his place of business, in which beat there are already two justices of the peace, does such justice of the peace automatically vacate his office, by failing to keep his office in his beat and actually keeping it in another beat?

I am of the opinion that your first inquiry should be answered in the negative. The territorial jurisdiction of a justice of the peace in criminal matters is governed by Section 3846, Code of Alabama, 1923, which provides as follows:

"3846. Territorial jurisdiction of justices of the peace in criminal matters.—Justices of the peace and notaries public ex-officio justices of the peace shall have final jurisdiction in criminal cases as provided in the following section in the respective precincts for which they are elected or appointed, and shall have and exercise such jurisdiction as to all matters arising in adjoining precincts in which there is no justice of the peace or notary public ex-officio justice of the peace, or when the justice of the peace or notary public ex-officio justice of the peace is disqualified or incompetent to act; but they shall have jurisdiction as to all preliminary hearings coextensive with their counties except in the precincts in which or for which inferior courts have been established in lieu of justices of the peace, and the jurisdiction of justices of the peace conferred on such inferior courts."

See also *Ex parte Davis*, 95 Ala. 9, 11 So. 303; *Edmunds vs. State*, 199 Ala. 555, 74 So. 965.

In answer to your second, third and fourth inquiries, I wish to refer you to Section 8706 (3), Code of Alabama, 1923, which provides as follows:

"8706. Duties.—It is the duty of every justice of the peace— * * *

"(3) To keep his office in the election precinct for which he is elected or appointed."

However, in my opinion, the maintaining of an office by a justice of the peace out of the precinct in which he was elected or appointed would not amount to a vacation of his office under Section 8707, Code of Alabama of 1923. Neither would it divest him of his powers as justice of the peace in his precinct. In respect to territorial jurisdiction of justices of the peace

in criminal cases, I again wish to refer you to Section 3346, Code of 1923, supra. As to time and place of the trial of civil cases, I wish to refer you particularly to Sections 8708 and 8710, which are as follows:

"8708. Justices of the peace must designate certain days, at least once a month, and appoint a particular place within their precincts, for the trial of civil causes, but, in cases of emergency, they may make their process returnable at any other time or place; and at such time and place all civil actions and proceedings cognizable before them must be tried, unless otherwise provided."

"8710. The summons must be executed three days before the return day thereof, by personal service of a copy of the summons and indorsements thereon on the defendant."

In my opinion, under authority of these Sections, civil actions in proceedings must be tried within the precinct in which the justice of the peace resides. Article 2, Code of 1923, Sections 8703 through 8723 contains general provisions concerning the duties and authorities of justices of the peace within precincts of their residence, which, in my opinion, is the limit of authority of said justices.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 13, 1935

Hon. J. N. Gray,
Chairman, Walker County Commission,
Jasper, Alabama.

Cost of publication of notice of election paid for by county.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of June 7, 1935, which is as follows:

"Will you please give me your opinion as to Section 447 of 1923 Code in connection with Sheriff's fees for ex-officio allowances as set out under Section 7287, third paragraph from bottom of section includes advertising and attending all elections.

"My contention is that the Sheriff pays for the advertising of all elections and in turn presents a verified account of the County Com-

mission in his claim for Ex-officio allowance including the advertising of election as an item of expense."

Section 447, Code of Alabama, 1928, is as follows:

"447. The sheriff must give notice at least thirty days before each election, by publication in some newspaper in the county, if any is published therein, and if not, by writings posted at the courthouse door and at three other places in the county, of the time of holding and the offices to be filled by such election. Such notice shall consist only of the date of the election and the officers to be voted for or subjects to be voted on."

The pertinent part of Section 7287, is as follows:

"Sheriffs are entitled to receive the following fees for the following services: * * * Impaneling grand juries, advertising and attending all elections, in his county, and for all other public services not otherwise provided for, such sums as may be just, to be allowed by the county commissioners court, upon presentation of a verified account showing the items of service rendered, to be paid out of the county treasury, not exceeding six hundred dollars per annum; but any sheriff whose annual income from fees of office exceeds five thousand dollars net, after all expenses have been paid by him shall not have any ex officio allowance, to be paid quarterly."

I do not agree with the position taken by you in this connection, but on the contrary, I am of the opinion that a newspaper having published notice of elections must present its claim to the Court of County Commissioners as any other creditor of said county is required to do and within the time prescribed by law. In my judgment the sheriff, as provided for in that part of Section 7287 which we have just quoted, shall receive such compensation as may be determined by the Court of County Commissioners for any services which he might have rendered in connection with publication of notice of elections or other services rendered relative to elections.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 15, 1935

Hon. Howell Turner,
Secretary of State,
Capitol.

Official elected but who failed to file bond until after the time prescribed by statute, if appointed to the office, must file another bond.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of May 6, 1935, which is as follows:

"Under date of February 22, 1935, the Judge of Probate of Bullock County certified to me that Mr. J. B. Tucker was on November 6, 1934, elected Constable for Precinct No. 1, Bullock County; that on February 22, 1935 he qualified by filing bond in the office of Judge of Probate. He forwarded One Dollar in currency for commission to issue. The Secretary of State notified him that as more than forty-five days had elapsed since his election and filing of bond, that a commission could not issue.

"On March 7, 1935, the Governor of Alabama appointed said Tucker to the office of Constable for Precinct No. 1, Bullock County.

"The question arises whether or not I am authorized to issue commission as his bond was filed prior to appointment. In other words, will it be necessary for him to execute a new bond before a commission can be issued."

I am of the opinion that it will be necessary for Mr. Tucker to file an additional bond.

Section 8703, Code of 1923, dealing with justices of the peace, says as follows:

"8703. Bond; by whom approved—Before entering on the duties of the office, they must give bond and security, payable and conditioned as provided by law, in the sum of one thousand dollars, which bond must be approved by the judge of probate of the county, and filed and recorded in his office."

Section 2607 of the Code, *supra*, is as follows:

"2607. Time of filing in office of Judge of Probate.—Such bonds, when required to be filed in the office of any judge of probate, must be filed therein within forty days after the declaration of election, or the appointment to the office."

Section 2610, Code, *supra*, is as follows:

"2610. Failure to file bond vacates office.—If any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office; and in such case, it is the duty of the officer in whose office such bond is required to be filed, at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases."

Section 2613 of the Code provides that the bonds of all officers required to give bond in this State, shall be contained in the following form:

"Whereas the above bound A. B. was duly elected (or appointed) to the office of _____ on the _____ day of _____ for the term of _____ years from the _____ day of _____; therefore if he shall faithfully perform and discharge all the duties of said office during his continuance therein, then the above obligation to be void."

It is my opinion that the bond first filed by Mr. Tucker was conditioned that he had been duly elected to the office of Justice of the Peace on the _____ day of _____ whereas by virtue of his failing to file said bond within the time required by law it became necessary that he receive an appointment from the Governor. Therefore, it appears to me that the first bond would not be sufficient because of the fact that Mr. Tucker holds his office by virtue of an appointment rather than by an election, as stated in the bond heretofore filed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 15, 1935

Hon. D. E. Laslie,
Judge of Probate, Macon County,
Tuskegee, Alabama.

Estates—Administrator of an estate may negotiate loan on personal property on the approval of the Judge of Probate.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 29, 1935, in which the following facts appear:

"Mrs. 'A', as Administratrix of the estate of 'A', has filed in my Court her petition asking for an order approving a loan negotiated by her as Administratrix of the Estate of 'A', on the 31st day of October, 1934. She gave as security for said loan 149 bales of cotton, being the cotton crop which was started by the deceased during the year 1934, and gathered by Mrs. 'A', as Administratrix of the estate."

In view of the above you request my opinion as to whether you, as Judge of Probate, have authority to entertain and approve the petition.

I am of the opinion that you have authority to entertain the petition, and may approve same if you deem such to be for the best interest of the estate.

The sale of personal property of estates for the payment of debts, for distribution and to prevent waste is governed by Article 14 of Chapter 253

(Sections 5832-5845). Section 5832 provides that same may be made only by order of the Court for certain purposes therein set out. Section 5842 provides that all farm products coming into the hands of the executor or administrator as assets of the estate may be sold at public or private sale, at the reasonable market value, either in or out of the State. Moreover, it has been held that in the absence of any statutory or testamentary provision to the contrary, as executor or administrator has power to raise money on the security of the assets in his hands by pledge or mortgage in order to pay the debts or fulfill other purposes of administration.—24 *Corpus Juris*, 227; *Farmers & Merchants Bank vs. Sanford*, 150 Ala. 195, 48 So. 226.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 15, 1935

Hon. Howard Kirby,
Clerk, Circuit Court,
Etowah County,
Gadsden, Alabama.

In issuing executions the clerk should be governed by Section 7795, Code of Alabama, 1923, rather than by Section 6670 thereof.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of April 30, 1935, which is as follows:

"Please render me your opinion on the matter of issuing execution on judgment.

"Sections 6670 and 7794 of the Civil Code of 1923 seem to conflict as to when I should issue an execution on judgment. Should I issue execution before expiration of ten day after judgment or after the lapse of ten days after judgment. If I should wait until the lapse of ten days after judgment by what time in your opinion should execution be issued, in order that the clerk may be in the clear and not be charged for any failure by State examiners."

Section 6670, Code of Alabama, 1923, is as follows:

"6670. Executions on judgment; new trial must be asked in thirty days.—After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issued thereon, and after the lapse of thirty days from the date on which a judgment or decree was rendered, the court shall lose all power over it, as completely as if the end of the term had been on that day, unless a motion to set aside the

judgment or decree, or grant a new trial has been filed and called to the attention of the court, and an order entered continuing it for hearing to a future day."

Section 7795, Code of Alabama, 1923, reads as follows:

"7795. Issue of execution must be signed and tested.—The clerk or register must issue executions on all judgments in favor of the successful parties within ten days after the rendition of judgment, unless otherwise directed by the court or the judge presiding at the trial of the cause. The writ must be signed by the clerk, and tested on the day it is issued."

There seems to be conflict in these two sections in that in Section 6670 it is provided: "After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issued thereon * * *", and in Section 7795, supra, it is provided: "The clerk or register must issue executions on all judgments in favor of the successful parties within ten days after the rendition of judgment * * *."

Section 6670 was first enacted in 1915 (General Acts 1915, p. 707). Section 7795, Code of 1923, was in the Code of 1907 as Section 4079, and reads as follows:

"4079. Issue of executions must be signed and tested.—The clerk must issue executions on all judgments in favor of the successful parties, as soon after the adjournment of court as practicable, within the time prescribed by this Code, unless otherwise directed. The writ must be signed by the clerk, and tested on the day it is issued."

Said Section 4079 of the 1907 Code was likewise amended by the Acts of 1915, p. 270, to read as follows:

"4079. Issue of Executions must be signed and tested. The clerk must issue executions on all judgments in favor of the successful parties as soon after the time prescribed for the issuance of said executions by law, as is practicable, unless otherwise directed. The writ must be signed by the clerk, and tested on the day it is issued."

However, upon the adoption of the 1923 Code the Code Commission rewrote Section 7795 (4079), Code of 1907, so as to read as heretofore set out.

By the 1915 Amendment it was provided that execution issue "unless otherwise directed." When codified in 1923 this section was changed as heretofore set out. I refer you to the Editor's note to Section 7795 as set out in the 1923 Michie's Code. In view of the revision made by the Code Commission, I am of the opinion that Section 7795 should govern where there is any conflict with Section 6670, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 16, 1935

Hon. R. F. Crabtree,
Notary Public and Ex
Officio Justice of the Peace,
Garden City, Alabama.

Justices of the Peace—on facts stated, may not assume final jurisdiction of criminal offense arising in precincts other than own.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of June 22, 1935, in which you request my opinion as follows:

"I am a Notary Public-Ex Officio Justice of the Peace for Precinct No. 4, Cullman County, Alabama. I would be pleased for a ruling from your office as to whether or not I am entitled to handle all cases in which a Justice of the Peace has jurisdiction arising in my precinct. To explain more fully: The local deputy sheriff and officers from Cullman and other precincts in this county will make arrests for the offense of public drunkenness or other minor offense here and take the cases to Cullman having warrants issued by a Justice of the Peace there and sometimes arrests are made here and the parties carried and tried before a Justice in another precinct. I will say that I do not issue warrants of arrest only in cases arising in my own beat and I am of the opinion that others have no right to try cases as above explained."

Section 9251 of the Code of Alabama, 1923 provides as follows:

"9251. Appointment and term of office.—The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, as defined by law, shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is appointed; and shall hold office for the term of four years from the first Monday after the second Tuesday in January 1911, and every four years thereafter."

The power of an ex officio justice of the peace is, of course, the same as the power of a justice of the peace.—Article VI. Section 168, Constitution of Alabama 1901.

Williams v. Woolf, 37 Ala. 298; Tyson v. Chestnut, 118 Ala. 387, 24 So. 73; Birmingham v. Brown, 15 Ala. 654, 660, 69 So. 263.

The Constitution of this State provides for the election of two Justices of the Peace in each precinct of the counties, by the qualified electors thereof.

and defines their jurisdiction in civil cases, but not in criminal cases—Article VI, Section 168, Constitution of Alabama, 1901, and Section 8700 of the Code provides for the election of two Justices of the Peace for every election precinct. Section 3846-47 of the Criminal Code of 1923, declares that justices of the peace have, in their respective precincts final jurisdiction of the offenses named in said Section 3047.

Under the constitutional provision and the statute, *supra*, relating to his election, the court of a justice of the peace is a court for the precinct in which he is elected, and for him to hold such court in other precincts, or to take final jurisdiction over cases from precincts other than his own, except when the statute expressly permits it, would violate the intent and policy of the law. This intent and policy is the more apparent from the fact that such a court is provided by law for each precinct.)

Accordingly, it is my opinion that those justices of the peace who undertake to assume final jurisdiction of cases not originating in their own precincts would be acting without authority. Code 5846. See also *Edinburgh American Land Mortgage Co. v. Peoples*, 102 Ala. 241.

Therefore, you are entitled to and should, try all cases arising in your precincts over which a justice of the peace is given jurisdiction by statute.

What has been said, of course, has no application to justices of the peace, if any, whose jurisdiction to try criminal cases is extended by special statute, nor to those justices acting in the event of the absence, disqualification or incompetency of another justice in such precinct; but there appears to be no such statute governing your case.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 17, 1935

Hon. J. F. Hitchcock,
Clerk of the Circuit Court,
Union Springs, Alabama.

1. Fine and Forfeiture Fund—General funds of the County may not be transferred to Fine and Forfeiture Fund on order of County Governing Body.

2. If County Governing Body directs transfer of balance of fine and forfeiture funds to General Fund at time when there are outstanding and unpaid registered claims and lawful charges against the same, it should direct the return to the Fine and Forfeiture Fund of sufficient of the monies so transferred to pay said claims and charges.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated June 26, 1935, as follows:

" 'Has the Court of County Commissioners the authority to replace in the Fine and Forfeiture Fund of the County, any monies which have been previously transferred from the Fine and Forfeiture Fund to the General Fund of the County,'

"The Court of County Commissioners, under authority of Sec. 304 of the Code of 1923, has from time to time transferred from the Fine and Forfeiture Fund of our county to the General Fund certain sums, which in the aggregate amount to several thousand dollars, and for several years past, the Fine and Forfeiture Fund has been unable to pay the warrant drawn against same."

Your inquiry must be answered in the negative. While the Fine and Forfeiture Fund is a county fund, the manner of its disposition resides with the Legislature and the County Governing Body has no control over it save only that specifically granted by Legislative Act. **Brown & Street v. Farris**, 93 Ala. 314, Ryan, Treasurer, v. Collins, 196 Ala. 478.

By Section 304 of the Code, the County Treasurer is authorized, on the direction of the County Governing Body, expressed by resolution spread its minutes, "to transfer the balance on hand at the end of any fiscal year of the fine and forfeiture fund in excess of the registered claims and lawful charges against said fund" to certain other county funds. Of course, the authority of the County Governing Body to dispose of fine and forfeiture funds is strictly limited to that expressly granted by Section 304, supra; and all of the conditions prescribed by that section must exist before any disposition of the said fund may be directed by said County Governing Body. See authorities supra. If a resolution is adopted directing the Treasurer to transfer all of the monies in said fund to some other County fund at a time when there are outstanding and unpaid any "registered claims or lawful charges against said Fine and Forfeiture Fund," such resolution would be void and the County Treasurer should not comply with the same. And if by caprice or by mistake the Governing Body adopts such resolution and the County Treasurer complies with the same and actually transfers to any other county funds the then balance of the Fine and Forfeiture Fund, before all existing claims are paid therefrom, it is the duty of the County Governing Body to direct by resolution, the return to the Fine and Forfeiture Fund of sufficient of said monies so transferred to pay such claims which existed at the time of the illegal transfer. And in the event that the County Governing Body fails or refuses to direct the return to the Fine and Forfeiture Fund of the monies so illegally transferred therefrom, the Treasurer may effect said return on his own initiative. See Biennial Report of Attorney General 1932-1934, page 187.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 17, 1935

Hon. Josh Stanford,
Sheriff, Choctaw County,
Butler, Alabama.

Searches and Seizures—Officers conducting search of storehouse, drug store, warehouse, hotel or cafe, for intoxicating liquors, must have legal search warrant.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated June 25, 1935, as follows:

"Does the Sheriff need search warrant to search a storehouse, drug store, warehouse, hotel or cafe for intoxicating liquors, and is he in the clear from being sued when he seizes beer not knowing what per cent of alcohol it contains,"

In my opinion your first inquiry must be answered in the affirmative.

Section 5 of the Bill of Rights provides:

"That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation."

See also Sections 4741 et seq. of the Code of 1923, which provide the procedure in such cases.

With particular reference to drug stores, your attention is invited to Section 4751 of the Code, which provides in part:

"But this article is not intended to secure the search of the premises of bona fide druggists who sell, keep for sale, alcohol only for medical, scientific or mechanical purposes, or wine for sacramental purposes as authorized by law, or of bona fide physicians who sell and keep for sale pure alcohol only for medical purposes at the places that may be allowed, and subject to the restrictions and regulations prescribed by law."

The answer to your second inquiry will depend on whether the officer acts without malice and on probable cause for believing that the beverage seized is in fact a prohibited liquor or beverage as defined by statute. "Probable cause" has been defined by the Supreme Court in the case of **Lunsford v. Dietrich**, 93 Ala. 565, as follows:

"Or, as defined by this court: 'probable cause is such a state of facts and circumstances as would lead a man of ordinary caution and prudence, acting conscientiously, impartially, reasonably and without prejudice, to believe that the person accused is guilty.' **Jordan v. Ala.**

Gt. So. R. R. Co., 81 Ala. 223. And in deciding upon its existence, the prosecutor's belief in the guilt or innocence of the party can not be considered; nor does the existence of such facts as might have influenced his judgment; but the test is the effect they might have upon the judgment of ordinarily prudent and reasonable men.—*Ramsey v. Arrett*, 64 Texas 320. These definitions wholly exclude the idea, that mere suspicions and belief, however honestly and intensely entertained, unsupported by facts known to the prosecutor, which would have justified reasonable and cautious men in believing the accused to be guilty, constitute probable cause."

Whether an officer acts maliciously or without probable cause in any particular case cannot be measured by a hard and fast yardstick. It is a jury question to be determined from a consideration of all of the facts and circumstances.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 17, 1935

Hon. W. W. Ramsey, Associate Member,
State Tax Commission,
Capitol.

Where outgoing license inspector cites delinquent for license and at his instance legal civil suit is filed and prosecuted to judgment, from which an appeal is taken, and the appeal is ultimately determined in favor of the State, but after such outgoing license inspector has retired from office, upon the payment of the money such outgoing license inspector is entitled to the fees due the license inspector rather than the incoming license inspector.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 5 in which you state:

"Some time during the year 1931 or prior thereto, Mr. Archie Leland, License Inspector at that time for Tuscaloosa County, cited the Tuscaloosa Building & Loan Association for privilege or license taxes for money lending for the year 1931 and for five years next prior thereto.

"This suit was brought in the name of the State of Alabama for the State, for Tuscaloosa County, and for the use of Mr. Archie Leland as License Inspector. This case was tried in the circuit court of Tuscaloosa County and was appealed to the Supreme Court of Alabama and has recently been affirmed. In this case, in addition to the license due

the State and County, there was a penalty of \$24.00 a year for the six years allowed for the License Inspector. As you probably know, this case was submitted in November 1934.

"Some time in the early part of the year 1935 Mr. James Thompson of Tuscaloosa, Alabama, was appointed License Inspector for Tuscaloosa County and since his appointment he has been performing the duties of this office. Mr. James Thompson is making claim to these penalties in the amount of \$144.00. Also Mr. Archie Leland, former License Inspector, is claiming these penalties in said sum of \$144.00. Since Mr. Thompson was appointed he likewise cited the Tuscaloosa Building & Loan Association for these back license for the period of six years. His citation was made during the early part of the year 1935.

"The licenses and penalties have been recently paid in the Circuit Court of Tuscaloosa County some time during the month of June or the early part of July, 1935.

"We would like for you to advise us whether Mr. Archie Leland, former License Inspector, or whether Mr. James Thompson, present License Inspector for Tuscaloosa County is entitled to these penalties. As you will observe, the penalties were not collected during the period of time that Mr. Archie Leland was License Inspector but were recovered during the time that Mr. James Thompson was License Inspector. It is also our information that these licenses or privilege taxes were collected as result of the civil suit above referred to.

"We also wish to advise that Mr. James Thompson present License Inspector has cited the Tuscaloosa Building & Loan Association for the privilege taxes due for the years 1932, 1933, 1934 and 1935. We would like for you to advise us whether or not Mr. Thompson will be entitled to the penalties if and when collected for these years, or whether Mr. Archie Leland, former License Inspector, will be entitled to such penalties."

In reply, I advise that in my opinion the fees accruing from the license inspector should under the facts accrue to the former license inspector, Mr. Archie Leland.

I am familiar with the case of **McNeel v. Stiles**, 139 So. 219, but the facts are so different that I do not think the conclusion in that case would control. In fact, the following language in this opinion supports my conclusion in the present case:

"The law contemplates that the services rendered before the compensation is earned, shall produce the result of bringing into the proper channels to supplement the treasury the taxes due, and until this result is produced the inspector is not entitled to compensation."

In the **McNeel** case, the outgoing license inspector had merely cited the delinquents and the incoming license inspector again cited them and by his efforts forced them to take out the license. The Court held that the incoming license inspector was entitled to the fees.

In the present case, however, the outgoing license inspector cited the delinquents for the various years, and at his instance, upon the legal liability for license being denied, instituted or caused to be instituted, a civil suit, which matter was tried through the various courts and decree was finally rendered by the Supreme Court during the present year, holding the delinquent liable. It appears that the license inspector, Mr. Leland, did all that could be done to see that the monies were collected and that the ultimate result was accomplished through his efforts. If this be true, he should be entitled to the fees.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 17, 1935

Hon. G. H. Howard,
Probate Judge of Elmore County,
Wetumpka, Alabama.

Solicitors—Deputy Solicitor not required to represent County for which appointed or elected in condemnation proceedings, or in negotiations relating thereto.

Under facts stated, County funds paid to Deputy Solicitor for professional services in representing County in condemnation proceedings, where services were valuable to County, should not be charged back by the Department of Examiners of Accounts.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated June 17, 1935, as follows:

"In 1924 and 1925 the Commissioners Court of Elmore County paid \$160.14 to P. K. Shirley, then Deputy Solicitor appointed by Circuit Solicitor, for representing the County in negotiations with the Alabama Power Company wherein the said Power Company sought to condemn certain roads and bridges in the County with a view to flooding same in connection with building water power dams.

"Please give me your opinion as to whether this service on the part of Mr. Shirley, comes within the scope of his official duties as said Deputy Solicitor and could have been required of him free of charge to the County.

"May the said Deputy Solicitor be required to represent the County in any matter in which the County is a litigant?

"At the time of this employment all other lawyers in the County were employed by the Power Company and were engaged against the County, as well as other notable Power Company lawyers from their offices in Birmingham. In these negotiations the County secured enough money from the Power Company to replace roads and bridges far better than those flooded, and had left many thousands of dollars clear to the County. In the opinion of the Court to have gone outside the County for an Attorney would have entailed a much heavier expense on the County.

"In view of these facts, and if this service were not within the scope of his official duties as Deputy Solicitor should this expenditure be regarded as one that should be charged back by the examiners."

Your first inquiry must be answered in the negative.

Section 5498 of the Code of 1923 prescribes the duties of circuit solicitors. See also Section 5522. The Deputy acts officially for his principal and not for himself. *State ex rel Jones v. Stearns*, 200 Ala. 405, 76 So. 321. There is no provision of law requiring a deputy solicitor to represent the county for which he is appointed or elected in "negotiations concerning the condemnation of county roads and bridges."

Answering your second inquiry, there are certain civil matters in which, by statute, the deputy solicitor is required to represent the county. However, there is no requirement that he should represent the county in the matter inquired about in your request.

Answering your third inquiry, it is my opinion that the expenditure made by the county to compensate the deputy solicitor for services bona fide rendered by him to the County in connection with the condemnation matter, should not be charged back to any county official.

Section 5024 of the Code of 1923 specifically prohibits an officer, such as a deputy solicitor, from entering into such a contract with the County. Acts 1931, page 845 (Code of 1928 Section 5523 (1)) purports to authorize any County to contract with a deputy solicitor who is paid on a fee basis. Of course, this 1931 Act is not retroactive and does not affect the question now under consideration; but attention is invited to it as illustrative of the legislative construction of Section 5024, *supra*.

However, if such a contract is entered into by and between the county and the deputy solicitor, and the county receives value for the monies expended by it, and the expenditure is for a service which the county might legally contract for, there is no reason why the amount so expended should be refunded to the county. The officer so contracting with the county is liable to the punishment fixed by statute, but the county has received value for a service which it has a legal right to employ. Of course, the contract would not support any action against the county by the contracting officer for payment for his services. Compare *Garrison v. Sumner*, 223 Ala. 117. See also *Lainhart v. Burr*, 49 Fla. 315. 38 So. 711, where many cases on the question are collated.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 18, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

(1) Justices of the Peace—Commission unnecessary—Acts of de facto officer valid.

(2) Officers—One may hold office of Justice of the Peace, Chief Clerk in Probate Office and Register in Chancery at one and the same time.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 26, 1935, which is as follows:

"A party was appointed Justice of the Peace on July 15, 1910 to fill out an unexpired term, was appointed again on January 15, 1913, was elected on November 23, 1916 and was elected on November 22, 1932. On each of the above dates he filed bond in the sum of \$1,000.00 and took the oath of office.

"I am unable to find where a commission was issued to such party as Justice of the Peace prior to his election on November 22, 1932, at which time a commission was duly issued and recorded in the office of the Secretary of State, and I am advised that no commission was issued prior to such time. This party has acted as Justice of the Peace continuously since 1910. This same party was also Chief Clerk in the Probate Office from January 15, 1923 to January 15, 1929 and from June 1, 1930 to November 14, 1932. This same party was Register in Chancery continuously from 1917 to 1935. I presume that he legally qualified as Register and Chief Clerk in Probate Office for each term so held.

"Taking into consideration the above will you please advise me as follows:

"1. If no commission was issued, was this party lawfully holding the office of Justice of the Peace prior to 1932?

"2. Could this party lawfully hold the three offices mentioned above at the same time?

"3. If he could not lawfully hold such office which office or offices did he vacate, taking into consideration the above dates?

"4. If this party lawfully held the office of Justice of the Peace from 1910 to 1921 at which time the term to which he was elected in 1916, expired, did he lawfully hold office from 1921 to 1933?

"5. If this party did not lawfully hold the office of Justice of the Peace from 1921 to 1933, were all acts done as a Justice of the Peace null and void?"

I am of the opinion that your first inquiry should be answered in the affirmative. A Justice of the Peace is one of the officers enumerated in Section 2579, Code of Alabama, 1923, which provides that the officers therein named must obtain a commission before entering upon and exercising the duties of their respective offices. However, Section 2582, Code of 1923, provides as follows:

"2582. Commission not necessary. All county officers, and officers chosen for any portion or district of a county, shall be authorized to exercise the duties and functions of the office to which they are elected, after they shall have received certificates of their election, as provided by law, whether they have received their commissions or not; but such officers shall first give the bond, if any, required by law, and take the oath of office prescribed by the constitution."

It will be noted from the above, that a Justice of the Peace need not obtain a commission before exercising the duties and functions of his office if he has received a certificate of election and executed the necessary bond and taken the oath of office prescribed by the Constitution. It appears that Section 2579 of the Code, *supra*, was part of the Code of Alabama for several Codes back, while Section 2582, *supra*, was new to the Code of 1907. Such being the case said Section 2582 will control.

I am of the opinion that your second inquiry should be answered in the affirmative. The inhibition against holding more than one office of profit at one and the same time is found in Section 280 of the Constitution of 1901. Said section provides as follows:

"Section 280. No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under the state; nor, unless otherwise provided in this constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds."

It will be noted that justices of the peace are specifically excepted from its provisions.

This office has heretofore ruled that the Chief Clerk of the Probate Office does not hold a civil office of profit under this State within the meaning of Section 280, *supra*, for that his compensation is not payable from public funds.—**Biennial Report of Attorney General, 1923-30, p. 385.**

Although a Register in Chancery may be a civil office of profit within the meaning of Section 280, *supra*, yet the holding of this office and the office of Justice of the Peace and Chief Clerk in the Probate Office all at the same time is not within the constitutional inhibition.

The affirmative answer to your second inquiry renders it unnecessary to answer your third inquiry.

I am of the opinion that your fourth inquiry should be answered in the affirmative. It appears that the Justice of the Peace in the instant case was duly elected and qualified. If at the expiration of his term of office his successor was not qualified and he continued as a de facto officer, any judgments by him are valid in spite of the expiration of his term. **Biennial Report of Attorney General, 1928-30, p. 189; Stephens v. Davis, 39 So. 831.**

The affirmative answer to your fourth inquiry renders unnecessary an answer to your fifth inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 19, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Costs and Fees—Clerk of the Court of Appeals not liable for failure to issue writ of execution for costs accrued in said Court, nor is Sheriff to whom the writ is addressed liable for failure to execute and return the same, unless the said failure of the said officers is negligent and results in injury.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion of recent date, as follows:

"In making an audit of the records of the checks of the Court of Appeals, the Examiner finds that the Clerk has issued executions for the cost and the Sheriff has never made a return on said Executions.

"Should the Execution be charged to the Sheriff in cases where he failed to make a return on said Executions?

"Where the Clerk fails to issue the Execution within the time prescribed by law, should said amount be charged to the Clerk?"

The answer to each of your inquiries will depend upon whether, if the writ was issued (as applicable to the Clerk) or if executed (as applicable to the Sheriff) all or any part thereof could have been realized from the defendant in execution.

The mere failure of a clerk or a sheriff to issue or to execute the process is not the criterion for determining the liability. Upon the negligent failure of such officers to perform the duties enjoined upon them, they and their sureties are liable for the damages sustained by reason of such negligence. See *Higden v. Fields*, 16 Ala. p. 182, 76 So. 465; *Nelava v. Jones*, 33 Ala. 139.

The maxim "Ex demno sine injuria non critur actio" has been strictly adhered to by the Courts.

Negligence of the officer may have been ever so flagrant, but no recovery can be had of him and his surety unless injury results from such negligence.

The presumption is, that sworn public officers have performed their duty, and this presumption obtains until disproved by him who asserts the contrary. *Smith v. Heineman*, 118 Ala. 195. Hence in an action against a sheriff for negligent failure to execute a process lawfully coming into his hands, it was held that the person alleging injury on account of such negligence must show prima facie that there was specific property in the possession of or belonging to the defendant in the process, subject to levy to satisfy the same. *Higden v. Fields*, supra.

Of course, the "charging back" of an item to a public officer by the Auditing Department of the Government is not in any sense an adjudication of the liability of the officer for the amount of the item. The question of whether such action should be taken by the auditing agency without first instituting an exhaustive inquiry as to the damage sustained, if any, by reason of the alleged negligence of the officer, is one which addresses itself to the sound judgment and discretion of the executives of that Agency.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 23, 1935

Hon. Ben F. Burch,
Ex-Sheriff Russell County,
Seale, Alabama.

Sheriff is not entitled to use his script or claims against the fine and forfeiture fund in the payment of fines.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 17, in which you request my opinion as follows:

"I am a former sheriff of Russell County and have a large amount of Fine & Forfeiture Claims against the County which are registered with the County Treasury. I am writing you to find out if I could legally sell these claims to parties who have Fines and Forfeited bonds to pay."

My answer to your request is in the negative. As you will note, Section 4038, Code of Alabama, 1923 makes all fines payable in money unless otherwise provided, and I am unable to find where it is otherwise provided. See Section 4038, supra, which is as follows:

"4038. Fines to go to county, and judgment accordingly—All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particular county."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 25, 1935

Hon. Eugene H. Hawkins,
Judge of Probate, Jefferson County,
Court House,
Birmingham, Alabama.

Mortgage filed by RFC Mortgage Company not subject to privilege tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 19th with reference to payment of filing tax on mortgages filed by the RFC Mortgage Company.

In reply, I beg to advise that in my opinion, mortgages filed by this company are not subject to the privilege recording tax.

See opinion of this office to Judge B. L. Malone of Morgan County under date of July 1, 1935, copy of which I herewith enclose.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 27, 1935

Hon. S. A. Reynolds,
Sheriff, Dallas County,
Selma, Alabama.

Highway Patrol—Have no authority to charge fees for approving bonds.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of July 9th, requesting my opinion as follows:

"In Dallas County, the Highway Patrol has been claiming the fee for arrest and fee for bond approval in cases they make on the road. It is my understanding that they are not entitled to the fee for approval of the bond.

"Please advise me as to this."

In reply I wish to advise that in my opinion the "Highway Patrol" is not entitled to fees for approval of bonds. Section 6½ of the Highway Code of 1927 which provides generally for the Highway Patrol was amended by the 1931 Acts, page 9 to read as follows:

"Section 6. That Section 6½ of Article 1 of said Act be, and the same is hereby amended so as to read as follows: Section 6½. POLICE POWERS OF COMMISSIONER: The Highway Commissioner of Alabama shall be, and he is hereby vested with full police power to prefer charges against, and to make arrests of any person or persons violating any of the highway laws of the State of Alabama. The State Highway Commissioner shall have full authority to designate any other person or persons in the employment of the State Highway Department as a deputy police officer, and such deputy police officer shall have full authority to prefer charges, or, and make arrests of any person or persons violating any of the highway laws of the State of Alabama, and the jurisdiction of each officer or deputy as herein provided shall not be restricted to any one county, but shall have full authority throughout the State of Alabama. Provided, however, that said officers and deputies shall have no authority to prefer charges or make arrests for the violation of other than that of the road laws of the State of Alabama."

In neither the Highway Code of 1927 nor in the amended Act of 1931 is the Highway Patrol given the authority to charge a fee for approving a bond. The law of costs and fees is penal in its nature and must be strictly construed. In the case of *Copeland v. Jefferson County*, 192 Ala. 12, the court said:

"An officer claiming fees or costs must point to some clear and definite statute authorizing the claim and the language of the statute

must be strictly construed against him, under the provisions of section 3693, Code 1907."

The Code of 1923, Section 7255 provides:

"7255. No fee charged unless expressly authorized.— The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law."

In the case of Northern Alabama Railway Company v. Lowery, 3 Ala. App. 511, the court ruled:

"A sheriff or constable claiming fees or cost is bound to point to a definite law authorizing it, and such laws will not be extended beyond their letter."

In the case of Troup v. Morgan County, 109 Ala. 162, the rule is clearly stated:

"In practice, while costs and fees are different in their nature,—the one being an allowance to a party for expenses incurred in prosecuting or defending a suit, the other, compensation to an officer for services rendered in the progress of a cause,—they are placed for their allowance upon the same strictness of construction of the statute allowing them; and when any public officer demands a fee for services rendered, he must point to some clear and definite provision of the statute, which authorizes him to make the charge or demand."

From the authorities cited above, it is my opinion that since there is no specific provision for fees for approving bonds by the Highway Patrol, and in view of the strict rule of construction of the law of costs and fees, the Highway Patrol is without authority and is not entitled to charge fees for approving bonds.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 27, 1935

Hon. L. J. McPherson,
Clerk of the Circuit Court of DeKalb County,
Fort Payne, Alabama.

Cases brought in the Circuit Court Under the Workmen's Compensation Act, should carry a \$3.00 trial tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 25th, in which you request my opinion as follows:

"Should I charge a three (\$3.00) dollar trial tax on Workman's Compensation cases where the case is put on the civil trial docket and signed by the Circuit Judge?"

"For easy reference I refer you to Attorney General's Opinion December 13, 1920 and Attorney General's Opinion October 16, 1933. It seems to me the latter annuls the former. Please advise me what to do, as I have several cases of this nature."

Answering your inquiry, I do not think the opinion you refer to, rendered on December 13, 1920, is based on the proper conception of the statute. You will note that Section 4½, Acts 1919, p. 284, as amended by the Act of 1931, p. 604, says in part: "that a trial tax of \$3.00 etc," makes no exception of cases not actually litigated, but says "goes upon the docket of the Circuit Court." Certainly, these cases go on the docket and this is all that is required for this to carry this cost.

The later opinion you refer to, we think, properly states the law and you will notice it states in the last paragraph: "All opinions of this office heretofore rendered in conflict with the above, are hereby overruled and withdrawn."

What the writer of the opinion rendered December 13, 1920, says is correct: That the costs in matters of this character, shall not exceed \$3.00, which is borne by the employee," and while this \$3.00 is collected as costs, it is not, in fact, costs, but a tax placed on all cases going on the docket of the Circuit Court.

It makes up a part of the revenue of the State and of the various counties, therefore, we are of the opinion this tax should be charged and collected as in other cases going on the docket of the Circuit Court, under the Act of 1931, p. 604, which is in part as follows:

"Section 1. That a trial tax of Three Dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which is now pending and which hereafter goes upon the docket of any circuit court in this State, to be taxed and collected as other costs, and when collected to be paid by the clerks or register of such court, as follows: one-half thereof into the general funds of the State Treasury, and the other half into the general funds of the county in which the same is collected and for collecting and remitting such tax, the clerk or register may retain 5% commission thereof."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 27, 1935

Hon. I. I. Moses, Chairman,
Court of County Commissioners of Russell County,
Girard, Alabama.

Court of County Commissioners—may employ attorney in suit
which directly affects interest of county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 17, 1935, in which the following facts appear:

"A quo warranto proceeding has been filed against all of the members of the County Commission of Russell County, Alabama, the purpose of which is to test the constitutionality of the Act passed by the Extra Session of the Legislature of Alabama in 1932 creating the County Commission and which will be found on pages 35 to 38, inclusive, of the Local Acts of Alabama Extra Session 1932. The action is filed in the Circuit Court of Russell County, Alabama, against each of the defendants as Members of the County Commission. The purpose of the suit is to, if possible, have declared the Act of the Legislature creating a County Commission null and void, and as such the welfare and interest of the entire County are involved."

In view of the above you request my opinion as to whether or not the County Commission of Russell County is authorized to employ counsel, and pay for the services out of the County Treasury, to defend said suit and contest the validity of said Act.

I am of the opinion that your inquiry should be answered in the affirmative. Section 5498 (8), Code of Alabama of 1923, provides as follows:

"All county solicitors, all circuit solicitors and any solicitors of any court of record, shall give every county official opinions in writing on all matters connected with their respective offices except in suits against official's bonds. But courts of county commissioners or boards of revenues may retain or employ attorneys, when it is deemed advisable or necessary, and the agreed compensation to them may be paid on are claims to grand and petit jurors."

The latter part of said section clearly confers the authority to employ each counsel as the county commissioners may deem advisable or necessary, and pay for same out of county funds.—**Clark vs. Fomerton**, 207 Ala. 401 63 So. 405. **Biennial Report of Attorney General**, 1932-34, p. 100.

The suit in question is one which directly affects the interest of the county, although it is brought against the individual members of the County Commission personally.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 30, 1935

Hon. Chas. W. Lee,
State Comptroller,
The Capitol.

1. The enumerated classes of prisoners for which the sheriffs of the several counties of the State shall receive pay for services in preparing food, etc., held to include the first and last number set out in the various classes, as well as those between such first and last number.

2. The Act being effective immediately upon its approval by the Governor, and being approved on July 10, such sheriffs are entitled to compensation under the new scale for July 10th and subsequent thereto.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 16th, in which you state:

"Please refer to House Bill No. 317-Calhoun, an Act to provide for payments to the Sheriffs of the several counties of the State for preparing food for prisoners, etc., and advise relative to Section "1" of said Act as follows:

"1. Would the Sheriff receive a fee of 50c per day for prisoner No. 2 and No. 5 as such Act reads for each prisoner **from two to five**?

"2. Would the Sheriff receive 40c per prisoner per day for prisoners No. 6 and 10 as such Act reads for each prisoner **from six to ten**?

"3. Would the Sheriff receive 30c per prisoner per day for prisoners No. 11 and 20 as the Act reads for each prisoner **from 11 to 20**?

"4. Would the Sheriff receive 5c per prisoner per day for prisoners No. 21 and 85 as the Act reads from 21 to 85?

"5. Would this Act take effect at the close of July 9th or at the close of July 10th? In other words, would the Sheriff receive compensation for July 10th under the new schedule as set out in this Act?

"Will you please give this your prompt attention in order that we may send a copy of your opinion to each Sheriff to serve him in making out his feed bill for the month of July which will be presented to this office for payment on or about August 5th?"

You enclose copy of H. B. No. 317 by Calhoun. Section 1 of said Act provides:

"Section 1. That the Sheriffs of the several Counties of the State shall receive pay for services in preparing food, serving food and other services incident to the feeding of prisoners not including the cost of food to be served to such prisoners, as follows: For 1 prisoner \$1.00 per prisoner per day; For each prisoner from 2 to 5 prisoners 50c per prisoner per day; For each prisoner from 6 to 10 prisoners 40c per prisoner per day; For each prisoner from 11 to 20 prisoners 30c per prisoner per day; For each prisoner from 21 to 85 prisoners, 05c per prisoner per day."

In answer to your several inquiries, I beg to advise that the intention of the Legislature seems so clear that it hardly calls for construction.

In my judgment, the various classes set out are without question meant to be inclusive. In other words, two to five includes both two and five — likewise, six to ten includes both six and ten; eleven to twenty includes both eleven and twenty and twenty-one to eighty-five includes both twenty-one and eighty-five.. The foregoing answers questions 1, 2, 3 and 4.

In answer to question 5, I advise that Section 2 provides as follows:

"Section 2. This act shall go into effect immediately upon its approval by the Governor."

The Act is shown as approved July 10, 1935. It being effective upon approval, it is my judgment that the sheriff should receive compensation for July 10th and subsequent thereto under the new Act.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 31, 1935

Hon. Frank O. Deese,
Judge of Probate,
Dale County,
Ozark, Alabama.

Court of County Commissioners may legally appropriate money from the general fund of the county to assist or aid in the construction of an armory to be used by the National Guard Unit.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of July 20, 1935, which is as follows:

"May the Court of Commissioners legally make an appropriation from the General Fund of the County to match federal funds in the construction of an Armory for the accommodation of the local military unit?

"I will greatly appreciate your opinion on this question at the earliest possible date, as this matter is now pending in this County and must be disposed of within the next week."

I am of the opinion that your inquiry should be answered in the affirmative. I refer you to Section 174 of Act No. 603, H. B. 784, approved July 31, 1931, General Acts 1931, pages 687, 747, which reads in part as follows:

"The County Commissioners, Board of Revenue, or other governing body in each County, and the City Council and City Commissioners, or other governing body of a municipality, are hereby authorized and empowered, at their discretion, to appropriate such sums of money as they may deem wise and advisable, not otherwise appropriated, to pay the necessary organization and maintenance expenses, and appropriate monies for the purpose of furnishing Armories, office furniture and equipments and lockers, training areas, target ranges, sheds for military vehicles, hangars for airplanes, shelter for Army animals and wagons, motor vehicles, artillery carriages and military equipment of every character, including flying fields and similar utilities, for military purposes of each detachment, company, troop, battery or group of these organizations, such as Battalions, Squadrons, and Regiments of the National Guard and Naval Militia located in their respective counties and municipalities, to be accounted for to the Governor by the organization receiving such appropriation, as herein provided in this Act for other military funds."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 31, 1935

Hon. F. B. Carpenter,
Clerk of the Circuit Court,
Clay County,
Ashland, Alabama.

(1) Costs which accrue in the Court of Appeals of this State are collected by the Sheriff of the County from which the appeal is taken under execution issued directly from the Court of Appeals.

(2) The costs which accrue to the officers of the county incident to said appeal, are also collected under execution by the sheriff and in case the sheriff's return shows "no property found" then it becomes a charge against the Fine and Forfeiture Fund of the

county under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 19, 1935, in which you request my opinion as follows:

"Mr. A— was tried and convicted in the County Court of Clay on a charge of vagrancy. Appealed to the Circuit Court of Clay County, and there tried by a jury and convicted and given a fine of \$250.00. Instead of paying said fine and cost or giving security therefor, the defendant took the necessary sentence of 90 days for the fine and 131 days hard labor for the cost accrued to this date.

"The defendant then took an appeal from the judgment and sentence of the Circuit Court of Clay County, to the Court of Appeals of Alabama, and executed a bond in the sum of SEVEN HUNDRED FIFTY & No-100 DOLLARS, conditioned that if he should appear and abide by and perform whatever judgment and sentence should be adjudged against him by the said Court of Appeals, then the obligation or bond to be void.

"The judgment and sentence of the Circuit Court of Clay was affirmed by the Court of Appeals and the said Court of Appeals ordered that the defendant (Appellant) pay all the costs both of the Court of Appeals and in the court below. The defendant presented himself and began serving the said sentence of 90 and 131 days as above stated. Since no additional sentence could be imposed for the cost accrued on appeal, who is responsible or liable for said appeal cost? Are the bondsmen liable?"

The costs which originate in the Court of Appeals in a criminal case are collected under Section 7319, Code of Alabama, 1923, by execution issued direct by the clerk of said court as provided by Section 7319, supra, which is as follows:

"7319. Fees and costs, how taxed.— In all cases appealed to said court of appeals, the fees and costs to be charged and paid for shall be the same as the fees and costs in the Supreme Court for like services as provided for in section 7284 (3719) of the Code of Alabama, and shall be collected and disbursed by the clerk of said court of appeals in the same manner as now provided by law for the collection and disbursement of same by the clerk of the supreme court, and a statement thereof shall be rendered by said court to the state auditor at the end of each month."

The costs, which accrued to the officers of the county, which were incident to the appeal, may also be collected by the sheriff of your county on execution, and if the execution is returned "no property found", then to be

paid out of the Fine and Forfeiture Fund of your County under Section 4039, Code of Alabama, 1922, as amended by the Act approved February 18, 1927 (General Acts 1927, p. 45).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 31, 1935

Hon. M. W. Forman,
Judge of Probate,
St. Clair County,
Pell City, Alabama.

Attention: Evelyn Pearson, Probate Clerk.

Bonds — Release of surety from bond of Justice of the Peace.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of July 2, 1935, in which you request information as follows:

"Will you please inform me as to what procedure is necessary in order for a person to be released from a bond. Mr. J. E. Bell was appointed as Justice of the Peace and Mr. J. W. Martin was on his bond and now Mr. Martin wishes to be released and Mr. Bell's term has not expired.

"If you will advise me as to the above matter as soon as possible I will appreciate it very much."

Your attention is called to the Acts of 1933, page 296, Section 23, which provides in effect upon what conditions and the manner in which sureties on bond now in force or hereafter made, may be discharged therefrom. Section 23 is set out below for your convenience, and it is my opinion that this section will answer your inquiry in full.

"Section 23. Any person or corporation who is surety upon the official bond of any county officer or employee, by whomsoever approved, may discharge himself or itself of such suretyship upon making sworn application in writing addressed to the official, court, Board of Commission required to approve such bonds setting forth such facts. Upon the filing of such application said official, court, Board of Commission to whom such application is addressed shall forthwith cause personal written notice to be served upon said principal fixing a day not less than fifteen nor more than thirty days after the date of the filing of such

application requiring such principal to appear before him or it on and at a certain date and place and give a new bond; and upon the failure of such principal to give such bond within the time specified in such notice, he vacates his office and the official Court, Board or Commission giving such notice must at once certify such vacation to the appointing power who must fill the vacancy. If a new bond be filed the same must be in such amount and filed and approved as provided in this Act. On the execution, approval and filing of such new bond such surety will stand discharged from all liability for any breach of said bond occurring thereafter but said discharge shall not affect the previous liability of any of the obligers, and in case of the discharge of any one or more obligers under this Act, the same shall operate as a discharge of all other obligers on said bond. When the sureties on either bond have made any payments thereon on account of the principal obliger therein, they are entitled to the same remedies and recoveries against the sureties in the remaining bonds as was provided by Section 2668 of the Code of 1923. Every such new or additional bond approved and filed as in this Act provided is binding upon the obligers from the time of the approval and subjects them to the same liabilities, proceedings and remedy as are provided in relation to the first official bond of such officer or employee."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 1, 1935

Hon. H. G. Dowling,
County Superintendent of Education,
Tuscaloosa, Alabama.

County Board of Education not authorized to omit annual election of teachers.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of June 8, 1935, in which you request my opinion as follows:

"Will you please give me your official opinion on this point of school law?

"Would it be legal for a county board of education in Alabama to abolish the annual election of teachers and other employees?

"Many states of the union have enacted teacher tenure laws which definitely provide a period of apprenticeship during which time teachers come up regularly for consideration and rejection or election and which

provide that after the period of trial a teacher serves so long as her work is satisfactory. This sort of tenure seems to me very desirable since it adds dignity to the teaching profession. I have never been able to see why teachers should have a period of uncertainty and anxiety every Spring, when the clerks in a store and the employees in any reputable business have no such time.

"I have read what the school law has to say about the employment of teachers, making of contracts, etc.; and I cannot find anything expressed in the law which orders an annual election of teachers. However, such an election is a very general practice in Alabama. Would my County Board be safe in omitting this election except in the case of teachers with less than three years experience and in thus giving the older employees a more complete sense of security?

"Your consideration of this matter and an official reply will be appreciated."

I am of the opinion that under our present statutes and regulations teachers should be elected annually and that a County Board would not be authorized to omit such election.

As you state, many states have enacted what are termed permanent tenure acts, under which a teacher, after a probationary period, serves (in your words) "so long as her work is satisfactory." This gives her a certain vested right in her position and she cannot be discharged, except for cause.

(See 59 Corpus Juris 381, paragraph 300, for General discussion of permanent tenure after probationary period).

Alabama has not enacted such a law, but makes the selection of teachers dependent upon written recommendation by the County Superintendent of Education. (Sec. 117 School Code of Alabama, 1927.) The County Board has no power to appoint until the Superintendent of Education makes recommendation in writing. (Board of Education of Escambia County v. Watts 19 Ala. App. 7; 95 So. 498, certiorari denied — 1923; Ex parte Watts, 209 Ala. 115, 95 So. 502).

I, therefore, advise that your County Board should hold an election of teachers each year after nomination by the County Superintendent of Education.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

August 1, 1935

Hon. Wm. D. Peeler,
Register, Circuit Court in Equity,
Lauderdale County,
Florence, Alabama.

Records or papers of any Court in Alabama cannot be carried out of the County except under the conditions set forth in Section 10127, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 20, 1935 in which you request my opinion as follows:

"Please give me your opinion as to whether or not Section 10127 of the 1923 Code of Alabama prevents us, as Register, from allowing five files to be carried by attorneys out of this county, except by order of court?"

Section 10127 of the Code of Alabama, 1923 does prohibit you from permitting any records or papers of any Court being removed out of the County, except under certain conditions, and is as follows:

"Section 10127. — No records or papers removed from County. — No records or papers of any court must be removed out of the county, except in cases of invasion or insurrection, whereby the same may be endangered, or unless by order of the court."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 1, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

(1) Schools — County Board of Education may not employ attorney to represent County Superintendent in a personal suit, but may do so in mandamus proceeding filed against the Board.

(2) Schools — County Board of Education has no authority to employ one of its members as inspector of school buildings.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 11, 1935, which reads as follows:

"The Examiners of Accounts find that the Board of Education — Lauderdale County paid \$600.00 Attorney's fee for representing Mr. Springer in the 'Quo Warranto Proceeding' brought against him by H. E. Williams, Superintendent of Education.

"They also find that the Board of Education paid \$175.00 Attorney's fee for representing the Board of Education in a mandamus proceeding filed against the Board by Mr. Williams. They also find that the Board of Education paid to Dr. W. H. Gregory, Chairman of the Board \$100.00 per year for making inspections of school buildings in the County.

"1. Has the Board of Education authority to use school money to employ an Attorney to represent the Superintendent of Education in a 'Quo Warranto Proceeding?'"

"2. Has the Board of Education authority to use School money to employ an attorney to represent them in a mandamus proceeding?"

"3. Has the Board of Education authority to employ a member of said Board as an Inspector of School Buildings?"

"This Quo Warranto Proceeding was brought by Mr. Williams to oust Mr. Springer as Superintendent of Education. It seems to me that this would be a personal matter between Mr. Williams and Mr. Springer, and not of any benefit to the school."

I am of the opinion that your first inquiry should be answered in the negative. The quo warranto proceeding in question is one purely of a personal nature between the County Superintendent of Education and the complainant. It is not a suit in which the County Board of Education or the State is directly or indirectly concerned. Therefore, in my opinion, the County Board of Education could not employ counsel to represent the County Superintendent of Education in said suit.

I am of the opinion that your second inquiry should be answered in the affirmative. The rule relative to the employment of counsel by County Boards of Education is stated in an opinion of the Attorney General rendered to the State Superintendent of Education on March 4, 1932, (Biennial Report of the Attorney General, 1930-1932, p. 763), which is as follows:

"Section 132 of the School Code, 1927 provides that the County Board of Education may sue and contract, which provision, of necessity, involves the liability of being sued. The authority to sue and to be sued, of necessity, carries with it the authority to employ and compensate counsel, when such Board is acting within the scope of its authority and when counsel for such purposes has not been provided by law — Jack v. Moore, 66 Ala. 188; Biennial Report Attorney General, 1926-28, page 418.

"However, such agents as boards of education to employ counsel in cases where counsel may by law be provided, whether by special provision by statute or by implication. The law provides instances where the Board of Education is to be advised by the Attorney General or, by possible implication, by the County Solicitor; also, where the State is a party in interest directly or indirectly the law provides that the Solicitor and Attorney General shall prosecute or defend its interest. In such instances the Board of Education would not be authorized to employ counsel but must avail itself of the counsel provided by law. — Biennial Report Attorney General, 1926-1928, page 418, supra."

Applying the above to the mandamus proceeding in question, it follows that the County Board of Education is authorized to employ counsel. The suit is one in which the County Board of Education is directly interested. It is not one in which the State is a party in interest, directly or indirectly, and consequently need not appear by its Attorney General or County or Circuit Solicitor. — **Opinion of Attorney General to County Superintendent of Houston County, rendered April 4, 1935.**

I am of the opinion that your third inquiry should be answered in the negative. Section 87 of the School Code of 1927, specifically provides "that no member of the county board of education shall be an employee of said board." — **Opinion of Attorney General to County Superintendent of Education of Lauderdale County, rendered February 4, 1935.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 1, 1935

Hon. H. G. Dowling, Superintendent,
Tuscaloosa County Schools,
Tuscaloosa, Ala.

Busses owned by individuals and generally used in the transportation of school children to and from schools, are not exempt from payment of license tax if other trips are made and fares or charges are collected for such trips.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

This is to acknowledge receipt of your letter of June 8th, which is as follows:

"Please give me your official opinion on the following point of law:

"Is it legal for a school truck to carry pupils and teachers to a school meeting or similar occasion which is not located on the regular route of

this truck and which may even be located outside the county in which this school truck usually operates?

"One of our school truck drivers, Ancie Bracknell, carried seventeen high school girls and two teachers to a purely educational meeting at Alabama College, Montevallo. This trip was arranged by school authorities and I presume that the teachers and pupils contributed enough money to pay for the actual expenses of gas and oil. On such trips there is never any idea of the drivers making money. Mr. Bracknell has been cited and ordered to purchase a tag. The license inspector here has agreed to hold up proceedings while we get your opinion.

"In rural areas our school truck drivers are a very considerable factor in making possible all our school meetings, P. T. A. gatherings, etc. They usually operate without any pay or for "gas money" to help people get to such gatherings. I do not think that this sort of thing is in any way in competition with licensed bus companies and really it is a very great school service as well as a considerable contribution to advancement socially and educationally in the open country. Some of our bus companies, however, are pinning down on this law; and I am anxious to get an official opinion so that we may know definitely just what a school truck driver has a right to do. Every county in the state is more or less concerned since the practice that I mentioned above is quite general."

Reply to your question depends upon the proper interpretation of the following provisions of the statutes of this state:

Act No. 163, approved July 22, 1927 (Acts of 1927, p. 139, et seq)

"Section 1. Every person, firm, company, corporation or association, * * *, who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure such license, * * *, and shall pay for the exercise of such privilege the amounts hereinafter provided and shall comply with all other provisions of this Act or any other Act."

"Section 17. For each motor truck the following license shall be charged and paid; * * * provided this section does not apply to automobile trucks used exclusively for transporting children to and from school. Motor trucks or motor vehicles used by the state or county or any municipality of this state shall not be liable for the payment of this tax, but shall carry tags."

Act No. 303, approved November 9, 1932 (Acts of 1932, pp. 305 and 306):

"Section 1. * * * Nothing herein contained shall be construed as to a license tax on motor vehicles **owned and used** by any municipal corporation or county in this state, but all such vehicles shall bear numbered tags, which the probate judge is authorized to deliver without the payment of any fee or charge, except the sum of fifty cents to cover the cost of each tag delivered by him to such municipal corporation or coun-

ty, and the proceeds of such payments shall be made to the State Treasurer without any deduction for commission by the probate judge. Cars **owned** by the State shall also be required to bear a numbered tag, application for which shall be made to the State Tax Commissioner of Alabama, and said Commissioner is hereby authorized and required to deliver without cost such tag and receipt upon application of the proper official, keeping a separate record of all such tags issued."

This office has heretofore held that motor vehicles **owned** by any municipal corporation or county in this state and used exclusively for transporting children to and from school, are not subject to any license tax and that motor vehicles so owned but used for other purposes are exempt from the license tax but must bear a tag which may be obtained, upon proper application, from the Judge of Probate of Montgomery County at a cost of 50 cents. (Biennial Report Attorney General 1928-1930, p. 110.)

However, I take it, from the facts presented by you, that the vehicle in question is not **owned** by a municipal corporation or county of this state, but an individual who is employed to transport children to and from school. So long as his operations are restricted to such transportation to and from schools, it is my opinion that no license tax would be due. However, I find no statutory authority which affords this vehicle immunity from the ordinary taxing statutes relating to motor vehicles when departures are made with such vehicle from its regular operations to and from school for the purpose of making trips elsewhere in the state, for fares or charges.

Exemptions from taxes are to be strictly construed against the one claiming such exemption, as said in Cooley on Taxation, 4th Ed., p. 1407, et. seq:

" * * * if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, * * * ."

That portion of Section 17 quoted above must be construed in connection with and in the light of that portion of Section 1 quoted above. It is clear that even if Section 17 required, in this case, only the purchase of a 50-cent tag from the Probate Judge of Montgomery County, which is seriously doubtful, there is nothing in Section 1 authorizing said Probate Judge to issue such a tag, unless the vehicle is **owned by a municipal corporation or a county of the state**. The vehicle under discussion does not appear to be so owned.

Therefore it is my opinion that the operations defined by you are not such as to bring them within the exemptions set forth in the above quoted sections.

The remaining question, then, is whether or not this vehicle is required to pay the license tax prescribed for busses.

Section 3 of Act 342, approved August 25, 1927 (Acts of 1927 p. 332) provides that such license shall be paid by "each automobile, motor car, or mo-

tor bus, used for transporting passengers paying fare or charges except a jitney bus." (Underscoring mine.)

Your inquiry indicates that at least some fare or charge was collected and under the statute just referred to, it is my opinion that the proper license as set forth therein should be collected.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 5, 1935

Mrs. Clyde Freeman,
Register Circuit Court,
Tallapoosa County,
Dadeville, Alabama.

Costs incurred in condemnation proceedings instituted under Act No. 671, General Acts 1931, page 806 are payable out of the fine and forfeiture fund of the County in cases where executions issued against the owners of machines are returned "no property found."

Opinion by Assistant Attorney General Lawson.

Dear Madam:

This is to acknowledge receipt of your letter of July 24, 1935, which is as follows:

"Recently the State on the relation of Sam W. Oliver, Prosecuting Attorney for Tallapoosa County, filed nine cases in the Circuit Court of Tallapoosa County, in Equity, seeking condemnation of slot machines under an act of the Legislature of 1931 (See Acts 1931, page 806). All of these cases resulted in condemnation of the machines. In accordance with the statute and final decrees in all cases I have issued execution against the persons in whose possession the machines were found and in each case the Sheriff has made the return, 'No Property Found.'"

"Section 10 of the statute provides that '—if such costs are not collected by execution, the register shall tax and collect such costs from the county in which said bill was filed and same shall be paid as in criminal cases in which the State fails, upon the court making an order to that effect.'"

"For my information and the information of the Probate Judge I shall appreciate your giving me your interpretation of this provision of the statute. I shall appreciate your giving me an opinion as to the method I should follow in collecting these costs."

I am of the opinion that, under the circumstances set out in your letter,

the costs incurred in such proceeding would be chargeable against the fine and forfeiture fund of your county as Section 4039 of the Code of Alabama, 1923, provides that costs in criminal cases in which the State does not convict are payable from said fund and costs in cases instituted under the "1931 Slot Machine Bill" General Acts 1931, page 836 are payable in cases where execution issued against the owners of the machines are returned, "No property found" in the same manner as costs are paid in criminal cases in which the state fails to convict.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 7, 1935

Hon. J. A. Keller,
State Supt. of Education,
Capitol.

Schools—County Board of Education may issue warrants hypothecating County Three Mill Tax for the purpose of purchasing bus equipment for transporting children under Section 281 of the School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 18, 1935, which is as follows:

"I will thank you to advise me as to whether or not in accordance with the provisions as are contained in Section 231 of the Alabama School Code of 1927, the county board of education can legally issue warrants hypothecating the county three mill tax which is now being levied and use the proceeds from said issue of warrants to purchase bus equipment for use in transporting the children in the schools of the county.

"The county that instigated this inquiry plans to issue approximately \$18,000 in interest bearing 6% warrants to purchase transportation equipment and to retire same over a three or five year period from funds derived from the three mill county tax which is now levied and collected in this county."

I am of the opinion that your inquiry should be answered in the affirmative.

Section 281 of the School Code of 1927 authorizes the issuance of warrants bearing interest at a rate not to exceed 6% per annum hypothecating county three mill tax which is being levied "in order to erect, repair, en-

large or equip school buildings, or make other improvements in the school facilities of the county." The question then presents itself as to whether "other improvements in the school facilities of the County" are sufficiently broad to cover the purchase of bus equipment for the use of transporting the children of the schools of the county. In my opinion, this inquiry should be answered in the affirmative. (See Section 100 of the School Code of 1927).

Therefore, under the authority of Section 281 of the School Code of 1927, supra. county boards of education may issue interest bearing warrants, not to exceed 6% per annum hypothecating county three mill tax which is now being levied and use the proceeds of said warrants for the purpose set out in your inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 19, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Schools—County Boards of Education have authority under general law to fix, in their discretion, the contract of employment of the County Superintendent of Education; such Boards have authority to provide expense accounts.

Opinion by the Attorney General.

Dear Sir:

I have your letter of June 28, 1935 in which you set out the following facts:

" Copy of Contract

.....County Board of Education

and.....Superintendent,
September 27, 1929

"Mr.....is elected County Superintendent of Education

of.....county for a term of two years and ten months, the term to begin on September 1, 1929 and end June 30, 1932. His compensation is fixed as follows. During the first ten months, his salary shall be at the rate of \$350.00 per month or \$4,200.00 per year. During

1930-31, his salary shall be \$4,500.00 per year, and during 1931-32 his salary shall be \$5,000.00 per year. During the entire terms, the superintendent shall be allowed an addition expense account for travel at a rate of eleven cents per mile when traveling on official business by auto, and shall be allowed actual expenses when traveling by train or other means of transportation on official business. Expense allowances shall be paid on written accounts setting out the nature of the trips made.

“ Contract 1932-1936

“Mr. is elected County Superintendent of Education of county, Alabama for a term of four years beginning on July 1, 1933 and ending June 30, 1936. The salary for the first year (1932-33) is set at \$4,200.00. For the second year (1932-34) \$4,500. For the third year (1934-35) \$4,800.00. For the fourth year (1935-36) \$5,000.00. In addition to the salary named above, the Superintendent is allowed 7c per mile for travel to be evidenced by itemized statements submitted monthly.

“The maximum amount to be expended during any one school year for such mileage expense is limited to \$600.00. In addition to the salary and mileage expense as authorized above, the County Superintendent is allowed and instructed to attend State and National meetings and conventions of Educators at the expense of the County School Treasury, the actual cost to be evidenced by itemized statements to be filed as a claim in connection with the county calendar pay rolls and such statements of expense to be reviewed and approved by the County Board of Education.”

“1. If the Superintendent was paid an amount, in excess of the stipulated salary, as traveling expense, would it be a legal expenditure of School Funds?

“2. If not a legal expenditure, is such amount a charge against the Superintendent and his official bond?

“3. If not a legal expenditure is such amount charged against the School Treasurer and the official bond?”

The opinion rendered to you on July 17, 1935, is hereby withdrawn and the following opinion is hereby substituted in its place.

In my opinion your first question must be answered in the affirmative, and as will be seen, such answer obviates the necessity of answering your second and third questions.

County Superintendents of Education may be divided into two classes, which, for purposes of convenience, I will refer to as class number one and class number two. The first class is composed of that group of Superintendents whose contracts of employment are definitely fixed by local laws.

and whose salaries are fixed at a maximum and a minimum limitation, by local laws.

Your question is primarily concerned with the legality of expense accounts. In so far as that group of county superintendents whose salaries are fixed by local law, is concerned, the question of expense accounts has been definitely settled by our Supreme Court: In the case of *Woodruff vs. Beeland*, 127 So. 235, the Court held that where a local law fixes the salary of the County Superintendent of Education, an additional expense account is wholly unauthorized. The only compensation provided for this group is to be found in the maximum and minimum limitations provided by the local law governing the particular county. However, this first class does not enter into the answer to your question. We are here concerned with the second class or that group not governed by a local law. It will be observed that a very distinct line of desecration separates the two classes when classified according to salary and expense account contracts.

The second class of County Superintendents acquire office by action of the County Boards, and are governed by the provisions of general law as set out in the School Code of 1927.

The County Board of Education, by the provisions of the School Code, is vested with a broad administrative and supervisory authority. Section 86 of the School Code *supra*, provides:

"The general administration and supervision of the public schools of the educational interest of each county, with the exception of cities having a city board of education, shall be vested in the county board of education. Provided, however, such general administration and supervision of any city having a city board of education may be consolidated with the administration and control of educational matters affecting the county and vested in the County Board of Education."

It will be seen that this section vests in the County Board a broad range of administrative and supervisory authority. The effect of this section is a delegation to the County Board of complete control of the educational affairs of the county, to be exercised in their discretion, except as limited by law.

Section 138 of the School Code provides in part as follows:

"The County Board of Education of each County shall appoint a Superintendent of Schools for a term of from two to four years from the first day of July next succeeding his appointment."

In this section, provision is made and authority is delegated by the legislature to appoint a County Superintendent of Education. The law remains silent, however, as to the terms of the contract of employment. It cannot be doubted that the legislature has authority to delegate this power, but the question arises as to whether or not this delegated authority is broad enough to include the power to fix a salary and an expense account. In the case of *McElderry vs. Abercrombie*, 104 So. 671, the Court says:

"But it is within the power of the Legislature to delegate to administrative agencies state or divisional, having special knowledge of the nature and quantum of the service, the fixing of the salaries, or compensation."

The power and authority here delegated does not specifically provide for the fixing of a contract of employment of any nature whatsoever. Such authority, if conferred at all, must be implied from the express authority granted in sections 86 and 138, supra. The rule governing construction of statutes of this nature is found in 59 corpus Juris, page 972, as follows:

"A statutory grant of a power of right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete."

The necessity of fixing a definite contract of employment is apparent, as an incident to the power and authority expressly granted. In the absence of any statutory provisions governing the fixing of a contract of employment, it is my opinion that the legislature intended that the County Board should have the right to fix such compensation for the County Superintendent, as in their discretion would be fit and proper. In my judgment, the County Board has authority to fix the salary and if in their judgment an expense account is necessary, it is my opinion that the County Board may provide such an expense account as the Board deems proper. In the McElderry case the Court goes back of the granted authority and refers to administrative boards having "**special knowledge of the nature and the quantum of the service**" for which compensation is to be provided.

In those counties not limited by local laws, the County Board of Education has authority to fix the superintendent's contract of employment. They also have authority to fix the salary of the superintendent and if in their judgment an expense account is necessary, it is within their power to fix the same.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

August 20, 1935

Hon. J. Proctor Smith, Chairman, pro tem,
Court of County Commissioners of Madison County,
Huntsville, Alabama.

Court of County Commissioners—has authority to contract with Federal Government to assist in flood control Project for protection of roads and bridges.

Opinion by the Attorney General.

Dear Sir:

I have your request for opinion dated August 5, 1935 over the signature of Hon. R. E. Spraggins, County Attorney, as follows:

"The United States Government has offered to clear Flint River and its tributaries so as to prevent floods in this County, providing the County will furnish rights-of-way, maintain the stream bed when cleared, guarantee the United States Government from damages.

"Flint River drains approximately three-fourths of the area of Madison County and serious floods result in tremendous damage to crops, roads and bridges annually. In 1929 a flood in September damaged the crops of Madison County, by Flint River, in the sum of \$727,000.00. In an average year the loss is about \$178,000.00 from destroyed crops. The above figures are the figures of the War Department at Washington.

"You will note, on reading the attached resolution, passed today by the Board, that the County is required to guarantee to the Government the right of ingress to do this work, also agrees to maintain the system after it is built. All property owners in the affected area have signed contract with Madison County, which agrees that it will not cost the County anything in any way, the property owners themselves assuming in this contract the cost of maintenance. The County itself will be saved many thousands of dollars in damages to its own roads and bridges."

In my opinion, the county governing body has ample authority to enter into the proposed contract with the Federal Government, as outlined in your request for opinion and the documents attached thereto.

Section 1397 (110) Code of Alabama, 1928, (Acts 1927, p. 348, Section 157) provides as follows:

"The courts of county commissioners, board of revenue, or other like governing bodies of the several counties of this State have general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this end, they have legislative, judicial and executive powers, except as limited in this article. Courts of county commissioners, boards of revenue, or courts of like jurisdiction are courts of unlimited jurisdiction and powers as to the construction, maintenance and improvement of the public roads, bridges and ferries in their respective counties, except as their jurisdiction or powers may be limited by the local or special statutes of the state. They may establish, promulgate and enforce rules and regulations, make and enter into such contracts as may be necessary, or as may be deemed necessary or advisable by such courts, or boards, to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use thereof; but no contract for the construction or repair of any public roads, bridges or bridge shall be made where the payment of the contract price for such work shall extend over a period of more than ten years."

The powers granted to the county governing body by the above quoted statute are sufficiently comprehensive to include participation in a flood control project that will prevent damage or destruction of public roads and bridges in the County.

Your attention is also directed to Section 17 of Act No. 19, approved January 31, 1935. The last clause of that section is, in my opinion, additional and alternative authority for engaging in the project if same is approved by the Governor.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 23, 1935

Hon. G. E. Alday,
Sheriff, Washington County,
Chatom, Alabama.

As a matter of sanitation and health under Section 4878, Code of Alabama 1923, the sheriff or jailer charged with the duty of preparing food for the inmates of the county jail may purchase ice to be used to preserve such foods at the expense of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 13, 1935, in which you request my opinion as to whether or not the county can pay for ice to be used for preserving food which is to be used for prisoners confined in the county jail.

Under an Act of the Legislature approved July 10, 1935, Section 4828, Code of Alabama 1923, is specifically repealed and a new setup for feeding prisoners confined in jail of the various counties is inaugurated but nothing in the Act says anything about furnishing equipment for cooking and preparing such food so we must go to the law as set out in the Code of 1923. I call your attention to Section 4878, which is as follows:

"4878. Expense of maintenance, etc., how paid.— The expense incident to the construction, maintenance, sanitation, healthfulness and hygiene of each county jail, prison, and almshouse in this state shall be paid out of the funds of the county in which such institution is located and of the town or city, if the institution be a town or city institution."

It is my opinion that as a matter of sanitation the sheriff or the jailer, who is charged with preparing and serving food to the inmates of the jail can purchase ice at the expense of the county for the purpose of keeping meats and other foods fresh. Biennial Report of the Attorney General, 1926-28, pp. 171 and 201. Biennial Report of Attorney General, 1928-30, p. 421.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 26, 1935

Hon. Henry S. Long, President,
State Tax Commission,
Capitol,

Attention Hon. Harry Simon, Chief Clerk

All delinquent licenses issuable by the Probate Judge or Commissioner of Licenses bear 6% interest from date of delinquency.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 15th, stating:

"In re: Section 353, Sub-section C, House Bill 324.

"This sub-section provides for penalty and interest on delinquent licenses.

"I request your opinion as to whether or not the imposition of interest at six per cent (6%) from date of delinquency shall apply to delinquent automobile licenses. If it was the intent of the Legislature to levy interest on delinquent automobile licenses, it will entail upon the Probate Judge more expense and time than the revenue to be derived from the imposition of this interest.

In reply, I beg to advise that subsection 6 of Section 353 provides in part as follows:

"Where any license issuable by the Probate Judge or Commissioner of license shall be delinquent, the same shall be subject to a penalty of 15 per cent of the amount of the license, which penalty must be collected by the Probate Judge or Commissioner of Licenses when the license is taken out together with interest at 6% from the date of delinquency.

This language calls for no construction. By its unambiguous terms it declares when "any license" * * * "shall be delinquent" the same shall be subject to penalty * * * "together with interest at 6% from date of delinquency."

This is a new burden placed on delinquents, not heretofore levied but that is a matter of legislative prerogative. The inconvenience to the issuing officers, is likewise a matter of legislative and not a judicial inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 27, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Licenses—Forms for reporting licenses issued, including automobile licenses, by the Judge of Probate to the State Comptroller and the State Tax Commission should be paid for by the county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 21, 1935, which is as follows:

"The question has arisen as to who is required to pay for the forms used by the Probate Judges in reporting their collections of automobile licenses. Please advise me as soon as possible whether the printing of the forms shall be paid for by the State or by the County.

"I wish to call your attention to Schedule 158.10, page 340, and Schedule 305, page 381, of the Revenue Bill, House Bill No. 324.

In answer to your inquiry, I am of the opinion that the forms in question should be paid for by the county.

Under Section 365 of the Revenue Code of 1935, the Judge of Probate is required, among other things, to furnish a report of all licenses issued to the State Comptroller and the State Tax Commission. Said section provides as follows:

"Section 365. Within ten days after the end of each month, the Judge of Probate must remit to the State Treasurer at the expense of the State, all money received by him for license belonging to the State, and pay to the County Treasurer all the money received by him for licenses belonging to the County, and within the same time the Judge of Probate shall forward to the State Comptroller and to the State Tax Commission each certified list of all licenses issued by him, stating thereon for what business issued, amount collected for each license, from whom collected, and the date of such collection; and if no licenses have been issued, he shall report that fact. The Judge of Probate shall be entitled to receive two and one-half per cent of the amount of money collected for licenses due the State, which he may deduct from his remittance to the State Treasurer, and he shall be entitled to the same amount as compensation for collecting licenses due the County, which amount he may deduct from the payment made by him to the County Treasurer, but he shall not be allowed any commission on any money not remitted by him within ten days from the end of the month. If the Judge of Probate fails to comply with the provisions of this Section within five days after the date on which he is required to make such report, and to remit the money collected by him, the Comptroller shall forthwith report the fact to the Governor, who shall cite such Judge

of Probate to show why he has not made report of the list of licenses and paid over the amount collected by him as required by law, and if such Judge of Probate fails to show sufficient cause for such failure, the Governor shall direct the Attorney General to institute impeachment proceedings against him before the Supreme Court.

Under Section 231 of the Code of Alabama of 1923, the county is liable for the necessary stationery and office supplies for the office of the Judge of Probate. The forms in question in my judgment, are supplies of the office of the Judge of Probate to be furnished by him and paid for by the county. The matter of reporting the list of automobile licenses issued is not different from that of the reporting of other licenses.

Schedule 158.19 of the Revenue Code of 1935, in my judgment, does not alter the above. Said section provides as follows:

"SCHEDULE 158.19. The money collected as motor vehicle and trailer license taxes, less all the expenses necessary for the purchase and delivery of the motor vehicle tags required by this Act, the purchase and delivery of the blank receipts, license blanks and other printing necessary in the licensing and taxing of motor vehicles, and the salary of officers or employees engaged in such department, together with all other necessary expenses for the enforcement of this Act, shall be distributed as follows: Eighty per cent (80%) to the State and twenty per cent (20%) to the incorporated city or town in which the owner of the motor vehicle resides, and twenty per cent (20%) to the county if the owner of the motor vehicle resides outside of an incorporated city or town. The money collected as motor vehicle license taxes by the State, less salaries and expenses, shall be used exclusively to create a sinking fund for the prompt and faithful payment of the principal and interest on good road bonds and for construction, maintenance and as required under provisions of Article XX of the Constitution of Alabama."

The expenses referred to in said Act relative to blank receipts, etc., apply to those furnished by the State in the licensing and taxing of motor vehicles. They do not include the report of the Judge of Probate to the State Comptroller and the State Tax Commission of the list of licenses issued as required by Section 365 of the Revenue Code of 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 31, 1935

Dr. J. A. Keller,
State Supt. of Education,
Montgomery, Alabama.

(1) County Boards of Education may sell interest bearing warrants based on the county wide three mill tax, and grant a portion of the proceeds to a City Board of Education within the county, the

same to be used for the purposes set out in Section 281 of the School Code.

(2) "Within the county" as used in Section 261 of the School Code and "of the county" as used in Section 281, held to mean the county as a geographical or taxing unit.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 28, 1935, in which you state:

"I would like to request that you advise me as to the legality of a county board of education issuing warrants hypothecating the county three mill tax for the purpose of securing funds to advance to a city board of a sum of money representing a loan from the county board of education to the city board of education for the purpose of constructing a school building within the boundaries of the city and under the supervision of the city board of education. This loan is to be repaid by the city board of education from tax levies derived by the city board of education for school purposes.

"This question confronts the Walker Board of Education, which board desires to issue warrants in the total sum of \$20,500 and to use the proceeds so derived in making a direct grant of \$10,500 to the Carbon Hill City Board of Education and a loan of \$10,000 to that board. The advancement of this \$10,000 as a loan, together with the appropriation of \$10,500 is for the purpose of enabling the Carbon Hill City Board of Education to secure federal aid for the construction of a high school building within the city limits. The amount of this \$10,000 loan is to be repaid by the Carbon Hill City Board of Education from proceeds derived by that board from a tax levy of five mills collected for school purposes.

"In view of the fact that it is necessary for this Department to secure this information before the application for aid from the Federal Government can be approved, which application has to be formally submitted on or before September 2, I will thank you to advise me immediately as to the legality of this procedure."

The so-called three mill county wide tax for public schools is levied under the authority of the Amendment to the Constitution known as Article XIX.

This Amendment authorizes the "several counties" * * * to levy the tax on each 100 dollars worth of taxable property in such county."

By Section 3, the funds arising from any county levy shall be apportioned and expended as the law may direct.

As will be noted, the levy is on all the taxable property in the county, including, of course, the property inside the corporate limits of any city within the county.

Section 261 of the School Code of 1927 provides for the calling of the election for such tax. This section provides:

"261. Calling Election For Levy Three Mill Tax.—Upon a petition signed by two hundred or more qualified electors of any County to the Court of County Commissioners or other governing body, said Court of County Commissioners or other governing body shall order an election to be held at the time specified in said petition to determine whether or not a special tax shall be levied for public school purposes within said County, and upon request of the County Board of Education to the Court of County Commissioners or other governing body, said Court shall order an election to be held at the time requested by the said Board of Education to determine whether or not a special tax shall be levied for public school purposes within any school district in the County under the control of such Board; and upon the request of any City Board of Education to the Court of County Commissioners or other governing body said Court shall order an election to be held at the time requested by said Board of Education to determine whether or not a special tax shall be levied for public school purposes within said City."

It is to be noted that the purpose is thus stated: "to determine whether or not a special tax shall be levied for public school purposes within said county."

Both the constitutional Amendment and Section 261 clearly show, I think, that the tax is to be levied on all the taxable property in the county for all the public schools in the county, or as expressed for "public school purposes in said county," and by its intent and language, means that the proceeds of the tax are to be used in the geographical confines of the county, whether such county embraces cities having city boards of education or not.

By Section 246 of the Code as construed in *State ex rel vs. County Board of Education of Russell County*, 214 Ala. 620 (108 So. 588) the County Board is given wide discretion in the apportionment of school funds. Its judgment on the amount which shall be apportioned to the various schools of the county including the apportionment to cities having a city board of Education, is not reviewable by the Courts except in cases of abuse.

It is true this statute was amended by Act No. 36, approved September 24, 1932 (Acts, 1932, p. 35), but as I read the amendment, the limitations apply primarily to state funds and not to county funds. The language of Section 3, is almost the same as Section 246. The construction given in the Russell County case was cited approvingly in *Harmon v. Ide*. 140 So. 418.

It is clear, therefore, that the proceeds of the county wide tax are for public school purposes of the entire county and the county Board is given wide discretion in apportioning such funds.

By Section 281 of the School Code, it is provided:

"281. Warrants Sold and Tax Pledged for Payment.—In any County which has levied or is levying a special County tax for school purposes, the County Board of Education, in order to erect, repair, enlarge or equip school buildings, or to make other improvements in the school facilities of the County, or to raise money for any of such purposes, may issue and sell school warrants bearing interest at a rate not to exceed six per centum per annum for an amount, including interest, not exceeding the income from said tax levy, estimating such income upon the basis of the assessed value of the taxable property in such County for the preceding tax years, as the annual return for such levy for the period for which such warrants are issued. The Board of Education of any County or of any City having a City Board of Education, in order to erect, repair, enlarge or equip school buildings or to make improvements in the school facilities of any school district under its control in which a district school tax has been or is being levied, or to raise money for any of such purposes, may issue school warrants bearing interest at a rate not to exceed six per centum per annum for an amount, including interest, not to exceed the income from such tax levy, estimating such income upon the basis of the assessed value of the taxable property in such City or school district for the preceding tax year, as the annual return from such levy for the period for which such warrants are issued."

It is to be noted that the proceeds of the warrants authorized to be sold are for the "school facilities of the county," again emphasizing a clear purpose that the funds be used anywhere in the county, for the purpose set out. Such a blanket purpose certainly includes schools of a city, even though not technically under the control of the County Board.

The broadness of this purpose is as applied to the county wide tax likewise emphasized by the second paragraph authorizing the issuance of warrants based on the district tax levy. The City Boards are specifically named and the proceeds are limited to the use of district or city district.

As I read Section 281, it is in effect and in fact the authorization of tax anticipation warrants, not, however, in the usual limited sense of such term, but based on tax anticipations for a period of years.

The purposes for which such warrants are issued, while more specifically stated are undoubtedly embraced in the term "public school purposes within said county" as used in Section 261. If not there would be a diversion from the uses authorized by the voters of the county.

Reading the "of the county" as used in Section 281 and "within said county" as used in Section 261, it is apparent that their meaning is identical and that they both are used in a geographical sense.

The argument is made that the County Board while it may apportion a portion of the tax proceeds annually to a city Board, cannot borrow money on these in effect Tax anticipation warrants based on the same tax levy and apportion any part of the proceeds of such loan to a City Board.

I confess that I do not follow such reasoning.

It seems clear that the funds received from the sale of the warrants, is nothing more nor less than an anticipation of the taxes due and that their rights relative thereto are practically the same as in the case of funds collected by the tax levies. The nature of the warrants as being tax anticipations is in effect declared by Section 281, making the warrants preferred claims against the proceeds of the tax.

It, therefore, follows that if a portion of the proceeds of the tax, when collected annually can be apportioned to the City Board, then it necessarily follows that when the taxes are anticipated by the issuance of warrants as authorized by Section 281, the County Board has the same power to apportion such portion of the proceeds from the sale of such warrants to a City Board within its county as it may determine to be reasonable and proper.

If this be not true, a county board could, by hypothecating all its three mill tax, forever be prevented from giving any portion of the county three mill levy, for public school purposes that might be in a city. I cannot believe that the legislature so intended. The fact that property located in the cities might contribute the greater portion of the taxes paid, argues against any such legislative intent.

I conclude, therefore, that the County Board of Education may issue interest bearing warrants based on the county three mill tax, under Section 281, and can apportion or grant a part of the proceeds of the sale thereof to the City Board, and such City Board can use such funds for the erection and repair of public school buildings in the city.

I have read carefully the opinions appearing in Biennial Report 1928-1930 at pages 713 and 961, and am convinced for the reasons set out above that their conclusions are unsound. The opinion of December 17, 1929 appearing at page 713 merely holds contra without authority.

The numerous citations in the opinion of September 30, 1930 do not appear to me to have important bearing on the subject, except the point stressed that the title of city school property is in the City Board and that county funds can be used only for the erection of buildings under the control of the county board. The title question does not always appear to be of prime importance, because under Section 381, title must be in the State before State aid can be secured.

However, there is nothing in the constitutional amendment, in Section 261 or in 281, limiting the use of the funds to properties owned or under the control of the County Board. To the contrary, the use of the tax proposed to be levied is by Section 261 declared to be "public school purposes within said county." In 281 the authority is to make improvements etc. in the "school facilities of the County." The tax being collected from a levy against all the taxable property in the county, it is reasonable to presume that the Legislature in using the terms "within said county" and "of the county," meant the county as a geographical or taxing unit, and not such portion as might be directly under the control of the County Board.

While Section 209 authorizes a municipality to issue bonds for school improvements of the city, I do not see that this limits the powers of the

county board. It is an additional method of securing funds, but as I read it, is not intended to exclude other methods.

The interpretation which I have given to the terms "within the county" and "of the county," as meaning the entire county as a geographical or taxing unit is amply sustained I think by the Supreme Court in the case of Fullman etc. Co. v. Hamilton 155 So. 184. The court there held in construing a statute authorizing courts of county commissioners or the municipal authorities to remit the taxes on certain industrial plants "for all county and municipal purposes," that special county three mill and district three mill taxes were included within the statute "as for a county and municipal purposes."

In **Town of Eutaw v. Coleman**, 189 Ala. 164, the court upheld the right of the court of county commissioners to appropriate monies to pay a part of the cost of paving the Town streets abutting on the courthouse. *Inter alia* the court said:

"County territory by no means loses its identity as such by reason of its simple inclusion within the limits of an incorporated city or town, nor do the people of a county lose their legal or practical interest in the maintenance of the highways within the incorporated area. Their right of way cannot be denied, abridged, or aliened by the town.—*Bell v. Foutch*, 21 Iowa, 131. In the case at hand the people of Greene County, whether they live within or without the town or Eutaw, have every beneficial interest in the proper maintenance of the streets of Eutaw they would have if the town had never been incorporated. They have, indeed, a peculiar interest in the streets in question, for the reason that these streets constitute the approach from every quarter to the seat of government, and the administration of that government at its appointed place requires that they be kept in a passable condition, and if the county may, of its resources, contribute to the keeping of these streets in a passable condition, it may help to keep them decently and conveniently free of mud in wet weather and of dust in dry seasons; and if such improvement contributes to the sanitation, comfort, and convenience of the courthouse, and the preservation of the public records there kept, as the bill in this case avers, that is but another reason why it should be made, and why some authority to make it should be sought in the interpretation of the law. Here there is *imperium in imperio*, and the inquiry as to what exclusive jurisdiction resides in the included government depends as much upon the matter of substance as upon territorial lines. Urban jurisdiction must be exercised upon urban subject-matter. So with the county. But what is urban subject-matter and what county subject-matter is a question of something more than mere form."

These remarks I deem highly pertinent to the present case.

The Eutaw case was followed in **Smith v. Franklin County**, 127 So. 904 where the bill averred that the county "agreed to contribute a part of the cost of the improvement, paying its part to the city in ten annual installments, with interest at 6 per cent, of which installments the county has paid two, and will continue to pay unless the court will intervene by its writ to prevent."

After citing the Eutaw case and the county's right to issue interest bearing warrants the court concluded:

"Here, limiting our decision to the exigency of the case presented, we find no statutory or constitutional inhibition against a county's contribution, in the shape of interest bearing warrants, to the improvement of the streets adjacent to its public buildings, even though located in a town or city."

By analogy I see no constitutional or statutory inhibition against a county school board contributing to the improvement of the school facilities of a city or town, either by a cash donation from a sale of interest bearing warrants based on the county wide three mill tax, or in the shape of interest bearing warrants based on such tax.

On the power to make a loan to the City Board, the authority is not so clear. City Boards are given authority to borrow money and to pledge the three mill district tax and County Boards are given the right "to contract." It is doubtful if such a right is authority to lend money. Adverting, however, to my conclusion that the County Board may make an outright grant to a City Board, it would seem to follow that such power included the right to make a temporary or limited grant.

The opinions of December 19, 1929 and September 30, 1930 are accordingly overruled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 3, 1935

Hon. Haygood Paterson,
Sheriff,
Montgomery, Alabama.

When the Governor issues his warrant on extradition papers, for the purpose of bringing a defendant from another State to this State for the trial of cases where the punishment is in the penitentiary or death, when said prisoner is returned and proper account of expenses is presented, the State must pay for such expenses regardless of whether the defendant is convicted or acquitted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date, in which you request my opinion as follows:

"Will you please give me a ruling on the following questions. When the sheriff or duly appointed agent or agents return a prisoner on requisition and appointment by the Governor, when are the costs to be paid?

"Does not Section 24, page 564, Acts of 1931 provide that said costs shall be paid by the State when criminal is returned to the State and the crime charged is a felony?

"Does not Section 29 of the same Act annul the administrative condition of conviction before expense is paid?

"In other words, when I or any of my deputies or other duly appointed agents of the State armed with requisition from the Governor go after a person charged with a felony in this county and bring him back for trial, am I not entitled to payment of the expense without conviction being necessary?

I call your attention to Section 24 of an Act approved July 22, 1931, General Acts 1931, page 564, which is as follows:

"Section 24. (Costs and expenses.) When the punishment of the crime shall be the confinement of the criminal in the penitentiary, or by death, the expenses shall be paid out of the state treasury on the certificate of the Governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose Governor the requisition is made, and not exceeding Ten cents a mile for all necessary travel in returning such prisoner."

You will note this Section says, among other things, "when the punishment of the crime shall be the confinement of the criminal in the penitentiary or by death, the expenses shall "be paid out of the state treasury, on the certificate of the Governor and warrant of the Auditor." In other words, where the defendant is charged with felony the state pays the expenses of the extradition, when he is charged with a misdemeanor, you will note further on in this Section, the county pays such expenses. This Section provides when the defendant is charged with a felony, the expenses of extradition shall be paid out of the state treasury "on the certificate of the Governor and warrant of the Auditor." Nothing is said about these expenses being contingent on conviction, nor do I find this condition provided for by any other Section. I am aware that the Governor in many instances places on the warrant for extradition the following, "payable on conviction." Section 29 of the Act, supra, follows:

"Section 29. (Repeal). All acts or parts of acts and administrative rules inconsistent with this act are hereby repealed."

You will note this says, among other things, "administrative rules inconsistent with this Act are hereby repealed." It is my opinion an order of the Governor such as we have set out above, is inconsistent with the man-

dates of Section 24, supra, and could not in the face of the language of this Section have the effect of delaying the payment of such expenses but to the contrary, we believe that when the expense account of the Sheriff or other officer empowered with the authority to transfer the defendant back to Alabama is properly presented by itemized statement which shows the account to be within the bounds prescribed by the statute that it must be paid, as provided by Section 24, supra, regardless of whether the defendant is ever convicted. To construe this otherwise would be to place a burden on the Sheriffs of the State, which would be unjust and calculated to become an enormous outlay by the sheriff, based on a dangerous contingency. In other words, under such an order if it can be made operative, the sheriff is compelled to guarantee the conviction of any defendant he may be called on to bring back to the State.

I might say in passing, there are other serious objections to having this burden placed on the sheriff that we do not feel it to be necessary to discuss at this time.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 4, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol

Cost and fees—Cost bill includes all cost in felony cases.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of July 17, 1935, requesting that an opinion rendered to Hon. Ernest L. McClure, under date of July 10, be reviewed as follows:

"Under date of July 10, 1935, your office rendered an opinion to Hon. Ernest L. McClure, Circuit Clerk, Lauderdale County, relative to arrest fees earned by a Constable and the Sheriff in felony cases. This opinion was written by your Assistant Mr. Small.

"Since it is in conflict with other opinions along this same line, will you please have it reviewed and if it is to remain in force, advise me accordingly.

"After talking this matter over with Mr. Small, he is of the opinion that such opinion should be reviewed."

In reply, I wish to advise that the last sentence of the opinion should be modified. I have therefore withdrawn the opinion above referred to and modified the same as follows:

I have your letter of June 14, 1935, in which you request my opinion as follows:

"An arrest was made by a Constable or Deputy Sheriff and brought before a Justice of the Peace on a felony charge and bound over to the Grand Jury. The Grand Jury found Indictment or True Bill and then the Sheriff arrested the defendant again.

"In making a Cost Bill to the State, must I charge \$1.50 for the Constable and \$4.00 for the Sheriff? If not, what charge shall I make?"

In reply, I wish to advise that, in my opinion, where an arrest is made by a Constable in a felony case, his fees must be collected, if at all, under the provisions of Section 3750, Code of 1923, and 3755, Code of 1923, which provide for the payment of costs and fees in preliminary proceedings. It is my opinion however, that in making the cost bill referred to in your request, that you should make a charge for four dollars (\$4.00) for the sheriff, as provided for in Section 3741, Code of 1923, and the \$1.50 for the constable.

I refer you to Section 3755, Code of 1923; 124 Ala. 102. (27 So. 215).

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 7, 1935

Hon. W. A. Austin,
Sheriff, Elmore County,
Wetumpka, Alabama.

There is no authority of law for paying sheriffs for waiting on non-jury terms in the Circuit Courts.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 18, 1935, in which you request my opinion as follows:

"Will you please advise me on the following matter?

"Should the Sheriff be paid for attending Non-Jury Term of Circuit Court, and if so, what amount should he be paid?"

I am unable to find any authority of law for allowing you pay for waiting on non-jury terms in the Circuit Court. The only authority I find is for waiting upon the Circuit Court when a jury is in attendance each day, to be paid out of the County Treasury, \$3.00.

Torbert v. Hale County, 131 Ala. 143.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 9, 1935

Hon. W. F. Williamson,
Justice of the Peace,
Cullman, Cullman County, Alabama.

Whenever a defendant is brought before a justice of the peace, charged with an offense of which he has jurisdiction, he must proceed to try and dispose of the case unless a trial by jury is demanded under Section 3854, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 12, 1935, in which you request my opinion as follows :

"I am a Justice of the Peace of Precinct No. 1 Cullman County, Alabama with jurisdiction extending over the entire County of Cullman. The following question has come before me several times and I would appreciate your ruling on same, viz:

"Where a Justice of the Peace has final jurisdiction in a case as for instance, a case of public drunkenness has the defendant in such cases the right to demand a jury trial, and is it the duty of such Justice upon such demand being made to not try the case but to have the defendant enter into bond or undertaking to appear at the next term of the Circuit Court, or from term to term until the case is finally disposed of."

I call your attention to Section 3854, Code of Alabama 1923, which is as follows:

"3854. Proceedings when defendant demands trial by jury.—If the defendant demands a trial by jury, he must be required to enter into bond, with good sureties, conditioned for his appearance at the next session of the circuit court of the county to answer the charge; and,

failing to give such bond, must be committed to the county jail until the next session of the circuit court having jurisdiction of the offense, unless he elect, in the meantime, to perform hard labor for the county as provided by law."

I do not find where this Section has been amended or repealed. When a defendant is brought before a justice of the peace charged with an offense of which he has jurisdiction to try and dispose of, such justice should proceed to try and determine the same unless the defendant demands a trial by jury and in this event it is the duty of the justice of the peace to follow the proceedings laid down in Section 3854, Code of Alabama 1923, supra. When such demand is seasonably made it robs the justice of his jurisdiction and it is his duty to require the defendant to enter into bond to appear at the next term of the circuit court of the county to answer the charge. *Pittman vs. State* 18 Ala. App. 447; *Ex Parte Dunklin*, 732 Ala. 241; 117 Ala. 161; Biennial Report of the Attorney General, 1928-30, page 241.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 9, 1935

Hon. O. F. Lightner,
Sheriff, Coffee County,
Enterprise, Alabama.

1. Costs and fees -- Sheriff's claim for ex officio fees should be itemized.

2. Court of County Commissioners -- Probate Judge has no legal right to decline to issue warrant for ex officio fees where claim therefor audited and allowed, although claim therefor not itemized.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of August 1, 1935, in which you state the following facts:

"Sometime ago I filed with the Commissioners Court of this county my claim for ex-officio services for the first quarter of this year, my claim being for \$125.00 instead of \$150.00, the maximum allowed by the law. The Commissioners Court approved my claim, but the judge of probate refuses to issue a warrant to me, because I did not itemize the services rendered by me."

In view of the above, you request my opinion as follows:

"1. Am I required by law to itemize services rendered in order to obtain the ex-officio fees provided by law for sheriffs?"

"2. Has the probate Judge the legal right to decline to issue a warrant upon a claim for ex-officio services rendered by me and approved by the Commissioners Court notwithstanding the services rendered by me were not itemized?"

Your first question must be answered in the affirmative. Section 7265, Code of Alabama, 1923, clearly provides that "Persons entitled to an allowance by the Court of County Commissioners for what are commonly called ex-officio services, shall before the allowance is made, **itemize such services**, and make oath thereto as in the case of other claims against the County." See also Section 7287 of the Code.

Your second inquiry must be answered in the negative. The law relative to said inquiry is clearly set forth in *Jefferson Publishing Co. v. Hilliard*, 105 Ala. 576, wherein the Court said:

"If the record should show affirmatively that the court had allowed a claim not legally chargeable on the county, the allowance of which was in excess of the authority with which the court is entrusted, the allowance would be void. But when the claim is of the character with which the county is by law chargeable, the audit and allowance creates a *prima facie* liability on the county; the power of the commissioners' court is exhausted; and the *prima facie* liability of the county imposes on the judge of probate the duty of giving the claimant a warrant on the county treasury for the amount allowed. He is without authority to revise the action of the commissioners' court in the allowance of the claim, as he would be without authority to revise its action in the disallowance of a claim. The duty of the judge, is obedience to the mandate of the court; a mere ministerial duty imposed on him in his ministerial capacity of the keeper of the records of the court, in the performance of which he is without discretion.—**Commissioners' Court v. Moore**, 53 Ala. 25. In *Jack v. Moore*, 66 Ala. 167, it was said: 'The issue of warrants on the county treasury in payment of claims the commissioners' court have allowed and ordered to be paid, is a ministerial duty imposed on the judge of probate, in the performance of which he has no discretion, unless the order of allowance is itself void, and on its face an absolute nullity, imposing no duty, and conferring no rights. When on its face the allowance of the claim is valid, and is the instrumentality for the payment of a claim chargeable on the county, he is without discretion — his duty is plain and simple, to issue the warrant on the county treasury, in obedience to the order of allowance; and if he refuses, the circuit court of the county, having a general jurisdiction and superintending power over all inferior tribunals, and officers exercising ministerial powers within its territorial limits, can by mandamus compel obedience.' "

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 10, 1935

Hon. Fred H. McDuff,
Sheriff, Jefferson County,
Birmingham, Alabama.

Sheriff has no authority to approve appeal bond from Justice of Peace Court or court of like jurisdiction.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of August 8, 1935, in which you request my opinion as follows:

"When a case is tried in the Court of Misdemeanors or Justice of the Peace Court and the case is appealed to higher court, have I the right to approve an appeal bond or must the Judge of the Court of Misdemeanors or Justice of the Peace approve these bonds?"

In my opinion, the sheriff does not have the right to approve such appeal bond. This duty is placed upon the "Justice or Court of like jurisdiction" by Section 3858 of the Code of Alabama, 1923 as amended by Act No. 30 approved February 15, 1927 (General Acts of 1927 page 33), which is as follows:

"Section 1. Be it Enacted by the Legislature of Alabama, that Section 3858 of the Code of Alabama as approved August 17th, 1923 be and the same is hereby amended as to read as follows: In cases tried before a Justice of the Peace, or court of like jurisdiction, the defendant, if convicted, shall have the right to appeal to the next ensuing session of the Circuit Court of the County, on entering into bond, with sufficient sureties, in such sum as the justice or court of like jurisdiction may require, conditioned that he will appear at the court to which the appeal is taken, until discharged by due course of law. If the Defendant fails to make the required bond, he shall be confined in the county jail till tried.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 11, 1935

Hon. G. W. Robertson,
Judge of Probate, Baldwin County,
Bay Minette, Alabama.

State Land Agent entitled to commission earned between January 1, 1935 and January 15, 1935 even though monies collected have been distributed to the various funds entitled thereto.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of February 26, 1935, which is as follows:

"I have received a copy of your opinion of February 5th, 1935, addressed to Hon. Price Williams, Judge of Probate of Mobile County, construing contract of Gessner T. McCorvey as State Land Agent. Mr. McCorvey's appointment covered both Mobile and Baldwin Counties, and a copy of his contract with the State Auditor was filed with the Probate Judge of Mobile County and also with the Probate Judge of Baldwin County. Prior to the rendition of your opinion on February 5th, 1935, my predecessor, Judge G. W. Humphries, made his final settlement as Probate Judge when his term expired on the 14th ultimo and failed to deduct from the amounts collected on redemptions the 10% commission which you have now ruled in your opinion to Judge Price Williams that Mr. McCorvey is entitled to on redemptions made from January 1st, 1935, to January 14th, 1935. Mr. McCorvey has filed his claim for 10% commission redemptions made through the Probate Court of Baldwin County during the period mentioned and his commissions amounts to \$120.00.

"The proposition I wish to submit to you is whether or not I am authorized to pay this commission to Mr. McCorvey out of the current redemption fund. As you know, each month when the Probate Judge makes his settlement he pays over to the State, to the County, to the School Board, to County officials, etc., their prorata of the amount collected on redemptions. The amount collected on redemptions during the period from January 1st, 1935, to January 14th, 1935, has already been disbursed by Judge Humphries to the various governmental agencies entitled thereto without deducting therefrom the amount of commissions due Mr. McCorvey.

"Would it be proper, and would I be protected, if I would now pay over to Mr. McCorvey his commission of \$120.00 above referred to out of moneys collected on redemptions made prior to the time I took office on January 14th?"

I am of the opinion that Mr. McCorvey has a legal right to his commission earned prior to January 14th, 1935 and that you can legally pay same to him even though your predecessor at the expiration of his term distributed monies so collected by him to the various funds entitled thereto in accordance with Section 3117, Code of Alabama, 1923, which Section is as follows:

"3117. Redemption money must be promptly paid over, else no commission allowed; quarterly reports. — When lands which have been bid in by the state are redeemed, the judge of probate must, during the month in which such redemption is made, remit to the state treasurer,

at the expense of the state, the proportion of the redemption money belonging to the state, and pay into the county treasury the proportion of such money belonging to the county, and to the proper authorities the proportion belonging to the school fund, if any; and upon all such money so paid over during the month of collection, he is entitled to commission at the rate of two and one-half per cent which he may deduct therefrom, but he shall not be allowed any commission on any money not so paid over; and on the last business day of each month the judge of probate shall certify to the auditor and to the county treasurer, upon blanks to be furnished by the auditor, a full and correct statement of all real estate bid in by the state and redeemed, showing separately the amount of state, county and school taxes and penalties and costs received by him on such redemption, and if no lands have been released, he shall report that fact."

At the time your predecessor went out of office there was some doubt as to whether or not the contract between Mr. McCorvey and the State covered transactions subsequent to December 31st, 1935. This office at that time had not rendered the opinion heretofore referred to, consequently, your predecessor did not feel justified in paying over to Mr. McCorvey the fees which he claimed. It was through no fault of his that the fees were not paid to him. He performed the services and is entitled to be compensated therefor.

Consequently, and inasmuch as the State, the County, the County School Board, etc. have already received in the aggregate \$120.00 which should have been paid to Mr. McCorvey for his services as land agent, during the period from January 1st, 1935 to January 14th, 1935, it is my judgment that you should now pay to Mr. McCorvey out of your current redemption fund the \$120.00 due him, deducting from the amount due the State, the County, the County School Board, etc. respectively, their respective pro rata share of such commission. In this way, each fund will be receiving the full amount to which it is entitled, the practical effect of handling the matter in this manner being that these various funds received in the aggregate for January, 1935, \$120.00 more than they were entitled to, while for September, 1935, these various funds will receive \$120.00 less than they would have been entitled to had Mr. McCorvey's commission been paid out of the redemption fund for January, 1935, as it should have been.

If you will handle this matter in the manner above suggested, the State Land Agent, the State, the County, the County School Board and the several county officials will each receive just what they were entitled to.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. F. H. Stokes, Mayor,
Enterprise, Alabama.

September 11, 1935

City Board of Education — Appointing Authority may appoint

member to supplant holdover incumbent at any time after expiration of said incumbent's term.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated August 2, 1935, as follows:

"The City Council has been careless and negligent in its compliance with the law regarding election of members of the City Board of Education here, so much so that there are now four holdover, or de facto, members serving on the board.

"This matter has been called to the attention of the City Council, and the question I wish to ask is:

"Is it now the duty of the City Council, although the time specified by law has passed, to fill the unexpired portions of the terms now being served by these four members, and would it now be legal to do so. In other words, can successors be legally elected at this time by the Council?"

Your inquiry must be answered in the affirmative.

Section 193 of the Alabama School Code of 1927 provides in part as follows:

"In the event of a vacancy in the membership of the City Board of Education by resignation or otherwise, the fact shall be reported to the City Council or Commission by the said Board, and the said Council or Commission shall elect a person to fill such vacancy for the unexpired term."

Where an incumbent continues in office after the expiration of his official term, pending the selection and qualification of his successor, the office is "vacant" as to the new term within the meaning of the above quoted statute, (see 46 Corpus Juris, page 968, Article 110; *State v. Amos*, 133 So. 623, 101 Fla. 114) and the Appointing Authority may set at any time after the expiration of the term to fill the "vacancy."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 11, 1935

Hon. S. L. Johnson, Clerk,
Circuit Court of Calhoun County,
Anniston, Alabama.

In criminal cases where two or more persons are indicted for the same offense, the clerk should issue a writ of arrest against each defendant and is entitled to the proper fee for each such writ.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Under date of July 17, 1935, I mailed you in response to your request an opinion on certain questions. My attention has been called particularly to question number 1, in which you state:

"1. May I make this comment for your consideration and would like for the Chief Clerk in your department to make inquiry about same. In a joint indictment when two or more parties are arrested, more than one capias must be issued and the clerk would be entitled to issuing the several writs of arrest. I take it that the word **once** means that the clerk would not be entitled to pay for more than one writ for the same party. In these same cost bills the sheriff is entitled to pay for arresting the two parties **once**. Why not the clerk?"

In reply I beg to advise that Section 3278 provides in part, as follows:

"A writ of arrest must be issued by the clerk forthwith after the finding of the indictment **against each defendant** who is not in actual custody, etc."

It is, therefore my opinion that the clerk is required to issue a writ of arrest against each defendant and is entitled to the proper fee therefor. The opinion of July 17th to this extent is modified and overruled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 12, 1935

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Person hauling ice from plant at one town and selling on commission basis outside the town, when acting as agent of the ice fac-

tory, and the commission paid him being merely a method of compensation, is not liable for peddler's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 14, 1935, in which you state:

"A party here is hauling ice from the ice plant at Evergreen and selling it on a commission basis, making deliveries to buyers out of Evergreen from his truck. The Ice Plant which manufactures the ice has accrued a privilege license for operating said plant.

"Under the above stated condition, is the person who sells the ice from his truck on a commission basis, subject to a privilege license for such operation?"

In reply, beg to advise that Schedule 85 of the 1929 Revenue Compilation provides as follows:

"For each ice factory \$1.00 per annum for each ton capacity per day."

It will therefore, be seen that the license on ice is placed on the manufacturer measured by tonnage capacity of the factory.

The right to manufacture carries the right to sell and usually includes the right to sell in the customary and usual manner of conducting a business. It would, therefore, seem that the manufacturer has the right to sell his product without additional license.

Applying these principles to your inquiry, it is my opinion that, if the party to whom you refer is selling as the agent of the ice factory, and that his commission is merely a method of compensation and that he is not an independent dealer in his own right, the sale is by the ice company, and if such ice plant has taken out the proper license, it would not be liable for an additional license under the facts detailed by you.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 12, 1935

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Montgomery County — Report of Probate Judge to Board of Registrars for the purpose of purging poll list.

Electors — Age and residential requirements for registration.

Elections — Purging poll list by Board of Registrars of those illegally registered — necessity of re-registration.

Opinion by the Attorney General.

Dear Sir:

I have your letters of July 11th and 25th, 1935, from which the following facts appear:

"Under Act No. 80 S. B. 109, approved February 28, 1931 (Acts 1931, p. 152), which is a general act of local application to Montgomery County, a report is required to be made under the supervision of the Judge of Probate to the Board of Registrars for the purpose of aiding the Board in purging the poll list as provided by law.

"There are a number of persons heretofore registered whose applications affirmatively show on their face that they were not 21 years of age at the time of registration. Also there are others whose application affirmatively show on their face that they were not residents of the State of Alabama for a period of two years next preceding the date of their registration."

In view of the above you request my opinion as follows:

(1) Under Act No. 80, supra, should the names of those, whose applications affirmatively show on their face registration before reaching 21 years of age, be reported to the board of Registrars?

(2) Under Act No. 80, supra, should the names of those, whose applications affirmatively show on their face registration prior to two years residence in the state, be reported to the Board of Registrars?

Section 2 of Act No. 80, supra, provides in part as follows:

"That in addition to other duties to be performed under the direction of the Judge of Probate, it shall be the duty of the election clerks herein provided under the direction, supervision and instructions of said Judge of Probate to carefully examine the records of registered voters on file in said office and make a report to the Board of Registrars when said Board is in session, for the purpose of purging the registration list as provided by law, showing all names appearing on said list of registered voters who are dead or who have removed from the county and prepare all necessary notices to be issued by the Board of Registrars to all persons whose names appear on the list of registered voters who have removed from the county, and keep a docket of all such names stricken from the list of registered voters showing the reasons therefor, date of service of notice, and date of order of the Board of Registrars striking any name off of said list. * * * It is the intention of this Act to provide for a correct list of qualified voters of said counties to be furnished the several election officers at each election or primary as now provided by law, and it shall be the duty of said election clerk to perform any and all services in this connection to carry into effect the purposes of this Act."

It will be noted that the names of those in the categories as set out in your inquiry are not specifically required to be contained in the report to the Board of Registrars. However, it is specifically provided that the in-

tention of the Act is to provide a correct list of qualified voters of the county. In order that this intention be effectuated all those names that should be stricken from the poll list should be contained in the report. The purpose of the Act requires this interpretation. The question, therefore, presents itself as to whether or not those persons in the categories as above set out should be stricken from the poll list by the Board of Registrars. If they should be, they should be included in the report. If not, they should not be included.

The provision relative to the purging of the poll list applicable to the question under consideration is Section 392 of the Code of 1923 as amended by Acts 1927, p. 274, which provides as follows:

"392. TIMES FOR PURGING LIST OF REGISTRATION. The board of registrars shall meet in each county on the first Monday in January, 1928, and every two years thereafter, for purging the registration list, and may continue in session one week. The names of those who have died, become non-residents of the State, become insane, and been so declared by inquisition of lunacy, or who have been convicted of any offense mentioned in section 182 of the constitution, since being registered, or otherwise disqualified as electors under the provision of the constitution, and any names which may have fraudulently entered on such list, shall be stricken from the registration list."

Those names which should be purged from the list are specifically enumerated. The questions of death, non-residence, insanity, conviction of crime or fraud are not here involved. This brings us to a proper interpretation of the phrase "otherwise disqualified as electors under the provision of the constitution."

"Otherwise disqualified by law" has been judicially defined as disqualification in the first instance and not a disqualification propter affectum. *Heaton v. State* (Ga.) 144 S. E. 782. The word "disqualified" has been judicially defined as meaning "ineligible." *Carroll v. Green* (Ind.) 47 N. E. 223.

In view of the above judicial definitions, it is my opinion that "otherwise disqualified" as used in Section 392, supra, does not contemplate that there first be a qualification. As used, "otherwise disqualified" is tantamount to "not qualified" or "ineligible".

Registration is one of the constitutional requirements of a qualified elector. Therefore, if one is not legally registered he is disqualified (not qualified or ineligible) as an elector and should be stricken from the poll list. The fact that he may have subsequently become eligible for registration is immaterial. An illegal registration is no registration. The remedy of the individual in such a case is to re-register.

Section 385 of the Code of 1923 does not alter what has been said in the preceding paragraph. Said section provides "No person heretofore registered and no person hereafter registered shall again be required to register unless he or she changed the county of his or her residence." "Registered" as here used, in my opinion, contemplates a legal registration in the first instance. In construing this section our courts have held that a registered

voter who changes his legal residence from one county to another must register in the county of his new residence. *Shepherd v. Sartain*, 185 Ala. 439, 64 So. 57. But a voter registered in a county is not required to register on changing his residence to another precinct in the same county. *Sellers v. Commissioners Court*, 165 Ala. 338, 51 So. 795. However, in all instances where there was not a legal registration in the first instance, a re-registration would be necessary to render one a qualified elector in respect to registration.

In an opinion of this office rendered to the Judge of Probate of Montgomery County on February 18, 1935, it was held that one must be 21 years of age in order to be eligible for registration. In other words, he must have been 21 years of age at the time of registration in order to register. Anyone who was registered before reaching the age of 21 was illegally registered. He does not possess the constitutional qualifications of an elector in respect to registration. (Sec. 185-187-188 of the Constitution of 1901). He is, therefore, disqualified (not qualified or ineligible) as an elector in this respect and his name should be stricken from the poll list.

The latest opinion of this office relative to residential requirements for registration was rendered to the Chairman of the Board of Registrars of Jefferson County on April 2, 1934. It was held that one need not have been a resident of the State for two years, of the county for one year, and of the precinct or ward for three months at the time he offers to register, these requirements being prerequisite to his right to cast his vote. This opinion was based on a former opinion rendered to the Chairman of the Board of Registrars of Montgomery County on December 10, 1931 (Biennial Report of Attorney General 1930-32, p. 594), which held that the residential requirements of Section 178 of the Constitution of 1901 did not apply to the time of the registration but to the time of the next general election following the registration (See Section 181 of the Constitution of 1901). It, therefore, follows that the names of those who will possess the residential requirements at the time of the next general election following the registration are legally registered and should not be stricken from the poll lists. If they will not possess the residential requirements by that time, they are illegally registered and their names should be stricken.

The premises considered, it follows that the report to the Board of Registrars under Act No. 80, supra, should contain only those names which should be stricken from the poll list. Therefore, the answer to your first inquiry is in the affirmative and the answer to your second inquiry is conditional, depending on the dates of residence as shown by the applications.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 13, 1935

Hon. R. H. McAnelly,
Judge of Probate, Jackson County,
Scottsboro, Alabama.

Transfer of mortgage upon which filing tax has not been paid
is subject to filing tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"I have on file in this office on assignment of mortgage. This mortgage was originally made to the First Joint Stock Land Bank of Montgomery, and transferred by them to the Union Central Life Insurance Company. When this mortgage was recorded it was exempt from tax by virtue of it being a subsidiary of the United States Government. Please advise me immediately if this instrument will carry the tax that was exempt to the transferer."

Section 21½ of Acts of 1927, p. 139 (1929 Rev. Code Sch. 51) provides in part:

"Deeds, bills of sale, etc. — No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, or which conveys any interest in any such property, except the transfer of mortgages on real or personal property within this State upon which the mortgage tax has been paid. * * *"

Your letter shows that the mortgage tax has not been paid. Your instrument does not come within the exemption and is therefore subject to the tax.

Biennial Report 1926-1928, p. 410.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 13, 1935

Hon. C. G. McCarty,
Tax Collector, Geneva County,
Geneva, Alabama.

(1) The Tax Collector in reporting delinquents to Probate Judge for sale of land for taxes, should describe the same in the same manner as it is described in the assessment sheet.

(2) Where property which has been in litigation, was assessed to different parties for different years, same should be reported and sold against the separate parties for the separate years.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 12th, in which you state:

"I wish to call your attention to the following case, asking your opinion in the matter:

"W. J. Chancellor and Mrs. A. E. Chancellor have not paid any taxes for the last four years, their property being in litigation and the case pending in Federal Court until recently. Since these parties have not paid these taxes and say that they are not going to pay them, it falls to my duty to advertise and sell the property for taxes. In 1931 and 1932, W. J. Chancellor assessed eighty acres of land, along with other property, and in 1933 and 1934, Mrs. A. E. Chancellor assessed the same property, with other property, W. J. Chancellor cutting this eighty acres out of his assessment. Mrs. Chancellor has paid 1934 tax on this property, but 1933 tax has not been paid. How am I to advertise this property? Would it be legal to describe the property in my advertisement as assessed to W. J. Chancellor for 1931 and 1932 taxes and to Mrs. A. E. Chancellor for 1933 tax?

"I shall appreciate an immediate reply in this matter, as I wish to start my advertising just as soon as possible."

In reply I advise that Section 250 of the 1929 Revenue Compilation in providing for report of delinquents by the Tax Collector to the Probate Judge says the Collector shall enter "each parcel of real estate or right or interest or easement therein, assessed to any person against whom the taxes have been assessed which are not paid, describing the same in the same manner as it is described in the assessment list."

It is therefore my opinion that the property should be described and sold as described in the assessment list for each of the years for which taxes are due. It is my judgment that you should sell the property as assessed to W. J. Chancellor separately for the years 1931 and 1932 and that portion as assessed to Mrs. Chancellor separately for the year 1933.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

September 13, 1935

Hon. B. F. Thompson,
Judge of Probate,
Ashland, Alabama.

Counties — May make appropriations for soil erosion and promotion of agriculture.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of September 10, in which you state:

"I am handing you herewith a resolution adopted by the Commissioners Court of Clay County, Alabama, on the 9th day of September, 1935.

"I will thank you to examine this resolution and advise me if the same is legal in all respects and whether or not the Commissioners Court has the authority to pass this resolution, and expend the funds as provided for in the said resolution."

You attach resolution of your Commissioners' Court which is as follows:

"WHEREAS, the State and Federal governments are engaged in 'Farm Demonstration Work' in Clay County, Alabama, and

"WHEREAS, the Farmers and citizens of said County are interested in the promotion of agriculture and demonstration work, including soil building and the prevention of soil erosion, and work of a like nature and character, and

WHEREAS, the time to secure State and Federal funds for the purposes herein set out will soon expire and such work is eminently necessary in order to preserve the farm lands of said County and to prevent soil erosion, it is hereby declared that an emergency exists and that it is imperative that the County take advantage of this opportunity to engage in farm demonstration work, soil building, and prevention of soil erosion in this county, and,

"WHEREAS, it is necessary and essential in order to carry on a program of Farm Demonstration Work, soil building and the prevention of soil erosion in said County through the Farm Demonstration Agent in and for said County that The Commissioner's Court work and enable the Farm Demonstration Agent to purchase necessary machinery, tools, equipment and supplies to facilitate the same, Now, therefore,

"Be it resolved by the Commissioners Court of Clay County, Alabama, that under and by authority of Section 6755, subdivisions 18 and 23 of the Code of Alabama, of 1923, that the sum of Eight Thousand, Eight Hundred (\$8,800.00) Dollars, or so much thereof as may be necessary, be and the same is hereby appropriated for the purposes herein set out, which said sum shall be used in and for the County of Clay, State of Alabama, under the supervision and direction of its Farm Demonstration Agent (F. M. White or his successor) in office.

"Be it further resolved and ordered that F. B. Thompson, Probate Judge of Clay County, Alabama, be and he is hereby authorized and empowered and directed to issue and deliver to said Farm Demonstration Agent, F. M. White, a County Warrant in the sum of \$8,800.00, said

Warrant to be drawn and made payable out of any County funds which may be available for such purpose, and in the event said warrant cannot be paid out of any other fund, then and in that event it shall be deemed and it is hereby declared to be payable out of the General Fund of Clay County, Alabama. Said Warrant shall be due and payable Two years after date of issue, and shall bear interest at the rate of six (6) per centum per annum, however in the event said note is not paid out of the proceeds as herein provided at the end of said two years, the same shall be renewed or extended for a term or period of two years from the date or maturity thereof.

"Be it remembered that on this the 9th day of September, 1935, at a regular session of the Commissioners Court of Clay County, Alabama, the foregoing measure was offered by H. H. Horn and upon a motion of H. H. Horn and seconded by W. G. Upchurch the same was unanimously adopted.

"W. G. Upchurch)
H. H. Horn) Commissioners
E. M. Barrett)
W. H. Catchings)

F. B. Thompson,
Judge of Probate."

In reply, I beg to call your attention subdivisions 18 and 23 of Section 6755 of the Code of 1923 providing as follows:

"18. Where the state or federal authorities have taken up the work of farm demonstration, or the organization of farm life clubs for the promotion of agriculture, to appropriate for aiding in such work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary."

"23. To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

If the county has a surplus over and above the amount required for preferred claims, in my opinion the Court of County Commissioners would be authorized to make an appropriation for such work. Biennial Report 1932-34, page 430.

Section 17 of Act No. 10, approved January 31, 1936 provides as follows:

"Section 17. That the proceeds from one cent of the tax herein levied shall be equally divided among the sixty-seven counties of the State of Alabama monthly as collected, less the actual cost of collecting the same, payment to be made to the County Treasurer or Depository of said counties on the 10th., day of each month of the year; and said

funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided, however, that the Board of Revenue or other such governing body of a county may, at any time within twelve months from the passage of this Act, use at their option, subject to the approval of the Governor of the State of Alabama, any of such proceeds as collected for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county."

If the proposed expenditure is for the purpose of matching Federal Funds, then this provision is authority in my judgment to use the proceeds of this one cent tax for such purposes.

However, I call to your attention, that this Act is superseded by the General Revenue Act of 1935 and that the above quoted proviso will be inoperative after September 30, 1935.

With reference to that part of your resolution, authorizing the issuance of an interest bearing warrant, I advise that the only authority for issuing interest bearing warrants is to be found in Section 6776 and 6782 of the Code.

By Section 6776, Counties may borrow money in anticipation of taxes not to exceed one half the tax income of the preceding year. These warrants are to be paid out of the current year's revenue and the proceeds received from them must be applied to the same purposes that the taxes would be used. Opinion to J. A. Carnley, Probate Judge, Coffee County dated July 19, 1933.

By Section 6782 et seq. counties are authorized to refund any outstanding legal indebtedness by the issuance of interest bearing warrants. This is authority to refund outstanding indebtedness and is not authority to borrow money as I interpret it. Opinion to Judge Carnley, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 16, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Court of County Commissioners — has no authority to furnish telephone service at residence of county officer.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for an opinion dated August 5, 1935, as follows:

"Is there any authority of law which would permit the Court of County Commissioners to pay for a telephone in the residence of a Sheriff?"

Your inquiry must be answered in the negative.

The Court of County Commissioners has only the powers and authority granted to it by statute. Subsection 16 of Acts 1931, page 759, as amended by Acts 1933, page 201, is the only authority which the county governing body has to provide telephones for officials. By the provisions of these Acts, such telephone service can only be furnished for the offices of the several officials. There is no authority for furnishing telephone service in the residence of any county official.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 16, 1935

Hon. H. M. Brittain,
Judge of Probate,
Randolph County,
Wedowee, Alabama.

Sinking funds providing for retirement of bonds must be invested in bonds of the United States of America or in bonds of the State of Alabama or bonds of any county of the State of Alabama or any municipal corporation of the State of Alabama or deposited in bank on interest.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of August 7, 1935, which is as follows:

"The Board of Commissioners of Randolph County, Alabama, through their Chairman, Judge of Probate, request an opinion from you on the following three points:

"First: What may we invest our Sinking Fund, (for the retirement of our out-standing bonds), in? (See Chapter 270, Article 1, Section

6755, subsection No. 22, page 1118 of Michie's Code of Alabama). Can we buy an Investors Syndicate Bond?

"Second: Can the present Commissioners Court bind its successors to a plan of Sinking Fund beyond their own tenure of office?

"Third: Since the outstanding bonds of Randolph County are Road and Bridge Bonds, out of what fund may a sinking fund be paid?"

I refer you to Section 2294 (61) Code of Alabama, 1923, which provides as follows:

"2294 (61) Sinking funds.—All sinking funds provided for the retirement of bonds shall be invested in bonds of such sub-division, or in bonds of the United States of America, or in bonds of the State of Alabama, or in bonds of any county in the state of Alabama, or any municipal corporation of the State of Alabama, or deposited in bank on interest. All sinking funds created by resolution or ordinance heretofore adopted must be properly set aside each year in accordance with the resolution or ordinance provided for the same, and a report made thereof and filed with the clerk of the municipality or with the probate judge of the county, as the case may be, showing in detail how said sinking fund is invested or deposited. All contracts now in effect for purchasing savings certificates, under the law as it heretofore existed shall, continue as legal investments."

I think the above quoted section definitely answers your question and needs no further elaboration.

Subsection 22 of Section 6755, is as follows:

"22. To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness, and to invest such sinking fund in such interest-bearing securities, or deposit the same on interest-bearing account, within the state, as said court may deem wise."

The said last quoted provision has been limited by Section 2294, subsection 61, supra, in so far as the investment of sinking funds set up to provide for the retirement of bonds is concerned.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 18, 1935.

Hon. Howard Kirby,
Clerk, Circuit Court,
Etowah County,
Gadsden, Alabama.

Judicial records — Organization of Grand and Petit Juries should be entered on minutes of the court only.

Trial Tax — Not assessable in garnishment on judgment, but is assessable in forfeitures in criminal cases.

Costs and fees — Clerk of Circuit Court as ex officio clerk of County Court entitled to fees for reissuance of subpoenas after case continued (Acts 1931, page 668).

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated July 9, 1935 as follows:

“(1) In the State Final Record is it compulsory that I enter the organization of the Grand and Petit Juries? This is entered upon the minutes and if put into final record would be a duplication of said record of the Grand and Petit Juries. After several inquiries I find that many clerks include in final record if case started by indictment only these items: The indictment, Writ of Arrest, Bond and Motions and so forth. Would I be in the clear to have my final record consists of such without showing the organization of Grand and Petit Juries in each case?

“(2) Should I charge trial tax in garnishment on judgment proceedings and also in Executions on Forfeitures in criminal cases?

“(3) Act No. 575 Gen. Acts 1931 entitles the Clerk of the Circuit Court to fee for re-issuing subpoenas in all criminal cases when continued to another term. Would I as Ex-Officio Clerk of the County Court be entitled to the same?”

Answering your first inquiry, it is my opinion that the organization of Grand and Petit Juries should be entered only on the minutes of the court and should not be recopied into the final record. Code 1923, Sec. 6724, Sub-section 9; Section 10126. **Biennial Report of the Attorney General 1923-1930**, page 558. **Biennial Report of the Attorney General 1930-1932**, page 714. *Curtis v. State*, 9 Ala. App. 36, 63 So. 745; *Carmichael vs. Matthews* 134 Ala. 210, 32 So. 681.

Answering your second inquiry, it is my opinion that no trial tax is assessable in a garnishment suit on a judgment rendered in the court out of which the garnishment proceedings are issued. See **Biennial Report of the Attorney General 1932-1934**, page 350. See also *State vs Hester*, 140 So. 744, 224 Ala. 460. Section 9 of the Revenue Bill of 1935 expressly exempts garnishment proceedings from the levy of a trial tax. However, forfeitures in criminal cases are not ancillary but are new, separate and distinct proceedings. It is, therefore, my opinion that trial tax is assessable in such forfeiture cases.

I am of the opinion that your third inquiry should be answered in the affirmative. In the case of *Swindle, County Treasurer, v. Crocker*, 217 Ala. 199, 115 So. 252, it was stated that “No fee may be taken expressly provided

by law", but it was held that, if the duty is imposed by necessary implication, then by the same implication the fee is allowable therefor. Acts 1931, page 668, does not attempt to limit its application to cases pending in the Circuit Court. It makes it the duty of the Clerk of the Circuit Court to re-issue subpoenas etc. It follows that by necessary implication, if said Act is applicable to all criminal cases, then it imposes such duty upon the Clerk in his capacity as ex-officio Clerk of the County Court. Therefore, in my opinion, the Clerk of the Circuit Court, when acting in the capacity of ex-officio Clerk of the County Court, would be entitled to his fee for re-issuing subpoenas under the 1931 Act, supra, since this duty is imposed upon him by necessary implication. The opinion found in Biennial Report of Attorney General 1930-1932, page 657, being in conflict with the above is hereby overruled and withdrawn.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

September 20, 1935

Hon. J. F. Laseter,
Judge of Probate,
Clayton, Barbour County, Alabama.

Bonds—The bonds of Notaries Public are approved by the Courts of County Commissioners, Boards of Revenue or other like governing bodies of the Counties, under Act No. 191, House Bill No. 364, approved April 20, 1933 (General Acts 1933, p. 203).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 17, 1935, in which you request my opinion as to who is the proper authority to approve the bonds of notaries public.

I am of the opinion that the bonds of notaries public should be approved by the Courts of County Commissioners, Boards of Revenue, or other like governing bodies of the counties under Act No. 191, House Bill No. 344, approved April 20, 1933 (General Acts 1933, p. 203).

Section 1 of Act No. 192, supra, provides as follows:

"Section 1. That all county officials, as set forth in this Act, of all counties in this State shall be required to execute official bonds payable to the State of Alabama for the faithful performance of their duties, and each additional official bonds as from time to time the public interest may demand and as required by the provisions of law."

It will be noted from the above, that the Act deals with all county officials, as set forth in said Act. The bond of notaries public is provided for in Section 14 of said Act. Section 3 of said Act provides as follows:

"Section 3. The Court of County Commissioners, Boards of Revenue or other like governing bodies of the respective counties are hereby authorized and empowered to fix and approve the officials bonds of all other county officials and employees, and clerks, deputies and employees in county offices in such an amount or amounts as may in their judgment be necessary for the safety and security of public funds or other funds as the public interest may demand subject to such limitations as are specifically provided herein and made applicable to each particular county official."

Although notaries public, strictly speaking, may not be considered county officials, yet, in my opinion, they are such within the terms of said Act in view of Section 1, supra, as same are set forth in said Act.

Since the approval of bonds of notaries public is vested in county governing bodies under Act 191, supra, it naturally follows that Section 9241, Code of 1923, which provides that such bonds be approved by the Judge of Probate, is necessarily repealed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 20, 1935

Hon. A. G. Teague, Clerk,
Circuit Court of St. Clair County,
Ashville, Alabama.

Bondsmen on the appearance bond of a defendant who appeals to the Supreme Court or to the Court of Appeals in a criminal case, are not responsible for the costs of appeal.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 8th, in which you request my opinion as follows:

"If a defendant takes an appeal from the Circuit Court of Appeals in a criminal matter and is sentenced for cost of lower Court alone, then makes bond which reads as follows in concluding:

" Now, if the said John Doe shall appear and abide such judgment as may be rendered by the Court of Appeals and pay all costs of appeal

together with the transcript and if the judgment of conviction is affirmed, or the appeal is dismissed, the said John Doe shall surrender himself to the Sheriff of St. Clair County, at the County jail within fifteen days from the date of such affirmation or dismissal, then this obligation to be null and void, otherwise to remain in full force and effect,' and said defendant did not surrender himself to the sheriff after the Court of Appeals affirmed the judgment of conviction by the Circuit Court, are the sureties on this bond liable for the cost accrued in the Court of Appeals?"

My answer to the above request is in the negative. Such bond is simply an appearance bond guaranteeing the appearance of the defendant to abide such judgment as may be rendered by either the Supreme Court or the Court of Appeals, if, after the affirmance of the case, the defendant surrenders himself to the proper authorities, the bond is discharged. If he fails, then, in this event, his bondsmen become responsible and are proceeded against as in other forfeiture cases.

See Section 3241, Code of Alabama, 1923:

Campbell vs. the State, 182 Ala. 18.

This shows such bonds have no function except as appearance bonds and this is in accordance with what we have said above.

Biennial Report of Attorney General, 1926-28, p. 165;

Biennial Report of Attorney General, 1926-1928, p. 346.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 25, 1935

Hon. L. H. Montgomery,
Judge of Probate,
Eutaw, Greene County, Alabama.

Commissioners Court— Authority to levy special tax for purpose of erection of courthouse.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Your letter of August 27, 1935, addressed to Judge Benj. F. Elmore has been forwarded to me. You request an opinion on the following:

"Does the Commissioners Court have authority to levy a special tax for the purpose of repairing and refurnishing the Court House?"

In my opinion an answer to such an inquiry depends on the facts in each case; that is to say, whether the work contemplated amounts to "erection" of a public building, or whether the same is "repairing" such building.

In an opinion rendered to Hon. U. G. Davis, Chairman, Commissioners Court., Crossville, DeKalb County, Alabama (Biennial Report Attorney General 1930-1932, p. 423) this office held that "Section 210, Code of Alabama, 1923, contemplates that all such work be done by contract, duly authorized by the court, as shown by its minutes. The contract should be in writing, and bond of the contractor should be given in compliance with an Act approved February 10, 1927, (General Acts 1927; p. 37).

Likewise, Section 210, *supra*, places the burden of defraying such repairing expenses upon the county general fund.—**Biennial Report Attorney General 1926-28, p. 716.** It is also stated in the above cited opinion that "should the Court of County Commissioners not have sufficient money in the general fund to pay for the necessary repairs or additions to the courthouse or jail, the county may make loans in anticipation of taxes as provided in Section 239 and 240 of the Code of 1923; these sections do not restrict your board as to how such money shall be expended, and I take it that the board can spend it for general purposes as allowed by law." Section 213 which provides for a special tax reads as follows:

"213. Special tax for county buildings, bridges and roads.—The court of county commissioners or other governing body of like jurisdiction in any county in this state, may levy and collect such special taxes as it may deem necessary not to exceed one-fourth of one per centum per annum, for the purpose of paying any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public buildings or bridges, or incurred for the erection of public roads since the 28th day of November, 1901, or that may hereafter be created for the erection of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected."

It will be seen from the above, therefore, that the county is authorized to levy special taxes for the erection only of public buildings, etc.—**Harrington v. Hopkins**, 231 S. W. 263, 265 **Escambia County v. Blount Const. Co.** 62 So. 650, 651.

The omission of the words "repairs" and "maintenance" from one section and their use in another of a single statute regulating the same subject cannot be regarded as devoid of significance.—**Commonwealth v. Hayden**, 97 N. E. 783, 784 (Mass.)

The courts have uniformly held that whether applied to the whole building, or to a part of a building, the word "erect" means "to build."—**Carroll v. City of Lynchburg**, 6 S. E. 133, 84 Va. 803; **Butz v. Murch Bros. Const. Co.** 9 S. W. 895, 897, 199 Mo. 279; **St. ex rel. City of Chillicothe v. Gordon**, 135 S. W. 929, 931, 233 Mo. 383; **Watson v. Greely**, 232 P. 475, 479 69 Cal. App. 643.

Any change or alteration must be such that the whole structure, as changed or altered, would commonly be regarded as another, new and different building.— *Rand v. Mann* (Pa.) 3 Phila. 429; *Driesbach v. Keller*, 2 Pa. St. 77; *Armstrong v. Ware* 20 Pa. St. 519; *Appeal of Hancock*, 7 Atl. 773 (Pa.); *Smith v. Nelson* (Pa.) 2 Phila. 113, 114.

The language of Section 213, *supra*, does not go to the extent of authorizing the levy of a special tax for the purpose of "repairing and refurnishing" the court house.

In an opinion of the Attorney General, Biennial Report 1923-24, p. 231, *supra*, Hon. Harwell G. Davis, then Attorney General, laid down the following rule, which is likewise applicable to the instant inquiry:

"In these many cases which lie in the twilight zone between 'construction' of a road and 'repairing and maintaining' a road, the authority charged with the expenditure of the funds will have to determine from all the facts whether the expenses of such case is a proper charge against the fund."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 25, 1935

Hon. Henry S. Long, President.
State Tax Commission,
Capitol.

Attention Mr. Harry Simon, Chief Clerk.

Licenses, Doctors — A physician employed by a company to treat its own employees and who engages in the art of preserving health and preventing and curing diseases, is "engaged in the practice of medicine," and is liable for the license levied by Section 9, Acts 1927, p. 139.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 29, 1935 in which you state:

"There is a licensed physician who engages only in the treatment of the employees of a coal company operating in Jefferson County. He maintains an office in Bessemer and also at the plant of this coal company. He makes no charge to the employees of the coal company for his professional treatments and his only compensation is from the coal company who pays him a monthly salary. He likewise treats the employees of this coal company at a private hospital, which hospital is not owned by the coal company.

"I wish to know, your opinion as to the liability of this physician for a license to practice medicine under Schedule 57, which is a levy on persons engaged in the practice of medicine."

In reply I beg to advise that the Statute (Acts 1927, p. 139, Section 9) levies a license on each person "engaged in the practice of medicine."

What constitutes the practice of medicine is discussed learnedly and at length by Justice Tyson later Chief Justice Bragg vs. State, 32 So. p. 767. In this able opinion he reviews the history and definition of medicine as mention in the Book of Genesis, reviews briefly the works of Aesculapius, Hermes, Hippocrates, Asclepiades, Calon, and brings his survey down to modern medicine.

Commenting on the proper interpretation of the term "practice of medicine" he said:

"So, then, the question is, what is the correct rule of interpretation of these words? Shall we interpret them in their popular sense or as commonly understood, or are they to be interpreted (being technical words, used in reference to a technical subject) according to the meaning or use they have when applied to the particular art or science with reference to which they are used? It cannot be well doubted that if they are technical words, having a technical meaning when applied to the particular art or science to which they refer, such use or meaning must be given to them, unless from the context of the statutes a different use or meaning is made apparent. 17 Am. & Eng. Enc. Law (2d Ed.) 13; 23 Am. & Eng. Enc. Law (1st Ed.) 324. This rule is stated by Mr. Endlich, in his work on the Interpretation of Statutes (pages 94-96, Sections 73-75), to be that: 'The words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment, and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use as in the subject or in the occasion on which they are used, and the object to be attained. That is, in the construction of a statute, as in that of other instruments, words are to be understood not according to their more ordinary general meanings, but according to their ordinary meaning as applied to the subject matter with regard to which they are used, unless, indeed, there be something requiring them to be read in a sense which is not their ordinary sense in the English language as so applied. * * * An obvious result of this rule is that, where technical words are used in reference to a technical subject, they are primarily interpreted in the sense in which they are understood in the science, art, or business in which they have acquired it.' After showing the application of the rule in the construction of words and phrases having legal technical meanings, the author continues by saying:

" 'But the rule giving to a word its technical meaning holds equally good in the construction of statutes dealing with other subjects as to which words and phrases used in a statute have acquired such a meaning, whether it be a legal technical meaning or not; i. e., whether it be a technical meaning which the word or phrase has acquired in the law, or a technical meaning which it has acquired in any other science, or

business, if the enactment relates to any of those, the technical meaning the word has in the law, in any other science, in any art, or in any business is to be given to it, accordingly as the one or the other is the subject of the enactment.' It will not be doubted that the word 'medicine,' however, whenever, and wherever used, has reference to the subject of a science or art,—a technical word denoting the science or art of curing diseases,—and that one who engages in the practice of it is a scientist or artist, professionally known by the name of 'physician' or 'doctor.' "

With this promise he then gives various definitions and concludes that the defendant who was engaged in the practice of osteopathy was engaged in the practice of medicine.

To the same import are the cases of *Wideman vs. State*, 20 Ala. App. p. 422 and *Hayden v. State*, 33 So. 655 (Miss.)

While as a general proposition the requirement for license involves a person's holding himself out to the public in some manner, such does not seem to be the application as applied to the learned profession or art of medicine. If one is engaged in the practice of that art, even though his clientele be limited he is nevertheless engaged in the practice of "treating and if possible the curing" of human ills.

I therefore hold that under the facts detailed by you, there is liability for license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 26, 1935

Dr. J. N. Baker,
State Health Officer,
Capitol.

Licenses—Schedules 101 and 124 of the Revenue Code of 1935, licensing osteopaths, chiropractors, scientists, naturapaths and chiroprpodists do not invalidate the requirements of Section 2837 of the Code of 1923, requiring a certificate of qualification for one who engages in the practice of medicine.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 9, 1935, which is as follows:

"I shall appreciate an opinion from you as to the proper legal construction to be placed on the following sections of the 1935 Revenue Bill:

"Article XIII, Chapter 1, License Schedule Section 348, p. 235, reads as follows:

" 'Every person, firm, company, corporation or association, receiver or trustee, but not a governmental subdivision, engaged in any business, vocation, occupation, calling or profession herein enumerated, or who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure a State license, a County license when so required, and shall pay for the same, or shall pay for the exercise of such privilege the amounts hereinafter provided and comply with all other provisions of this Act.'

"Schedule 101 of this same Section 348, p. 284, reads as follows:

" 'Each osteopath or chiropractor practicing his profession shall pay an annual license of twenty dollars (\$20.00) to the State, but no license shall be paid to the county. If such business is conducted as a firm, or corporation in which more than one person is engaged, each osteopath, or chiropractor so engaged shall pay a license of twenty dollars (\$20.00), provided further, that no osteopath or chiropractor shall be required to pay a license until after he has practiced his profession for two years.'

"Schedule 124 of this same Section 348, p. 292, reads as follows:

" 'Each scientist, naturapath, or chiropodist practicing his profession shall pay an annual license of ten dollars (\$10.00) to the State, but no license shall be paid to the county. If such business is conducted as a firm, or corporation in which more than one person is engaged, each scientist, naturapath or chiropodist so engaged shall pay a license of Ten Dollars (\$10.00), provided further, that no scientist, naturapath or chiropodist shall be required to pay a license until after he has practiced his profession for two years.'

"It will be observed that each of these schedules deals with a particular group practicing the healing art. Section 2837 of the 1923 Code of Alabama reads in part as follows:

" 'An applicant for a certificate of qualification to treat diseases of human beings by any system of treatment whatsoever shall, according to rules prescribed by the Medical Association of the State of Alabama, be examined in writing, by the State Board of Medical Examiners, in the following named branches of medical learning,' * * *

"Specifically, I wish to be advised as to whether the schedules above referred to, in any way, invalidate the requirements exacted of any one attempting to deal with human ailments as set forth in Section 2837 of the Code."

I am of the opinion that your inquiry should be answered in the negative.

The above license schedules presuppose the issuance of licenses only to those who are legally entitled to engage in the practice of the professions in question.—*Biennial Report of Attorney General 1930-32, p. 328.*

If one desires to engage in any profession, by whatsoever name called, within the contemplation of Section 2837 of the Code of 1923, (viz. practicing medicine) he must first obtain a certificate of qualification required thereunder. The licensing authorities are unauthorized to issue a license to anyone unless thus qualified.—*Jackson v. City of Sylacauga*, 25 Ala. App. 224, 144 So. 125. Moreover, to practice without first obtaining said certificate of qualification is a criminal offense.—Section 5191, Code of Alabama of 1923.

Construing Sections 2837 and 5191, of the Code of 1923, supra, the courts of this State have held that said sections are broad and comprehensive. They not only include chiropractors and osteopaths, but all persons who would treat or offer to treat the disease of human beings by any system whatsoever.—*State ex rel. Biggs v. Higbee*, 224 Ala. 121, 138 So. 819; *Robinson v. State*, 212 Ala. 459, 102 So. 693; *Bragg v. State*, 134 Ala. 165 32 So. 767; *Wideman v. State*, 20 Ala. App. 422; 104 So. 438.

The mere fact of the enactment of license schedules for chiropractors, osteopaths, or the like, does not invalidate the provisions of Section 2837, Code of 1923, supra. As above stated, said schedules presuppose the legal right to practice the professions in question. It will be noted that the 1935 Revenue Code also includes a license schedule for those engaged in the practice of medicine. (Schedule 106, p. 286). It could not be argued that one would be entitled to practice medicine by the mere securing of a license under this schedule without complying with the provisions of Section 2837, as to obtaining the certificate of qualification thereunder. The same is true of Schedules 101 and 124, supra. Moreover, Schedule 132 of the compiled Revenue Laws of 1929 (Acts 1919, p. 282, Section 361, Schedule 77) provides for a license for osteopaths.

From the foregoing it follows that if one desires to engage in the practice of any profession within the contemplation of Section 2837, Code of 1923, supra, (viz. practicing medicine) he must first obtain the certificate of qualification required thereunder, the various license schedules to the contrary notwithstanding. If said certificate of qualification is not obtained and one pursues any of the professions, which require said certificate, criminal liability would attach under Section 5191 of the Code of 1923, supra. Also, quo warranto proceedings may be instituted under Section 9932, Code of 1923.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 3, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Taxation:

1. Under Section 169-A of the Revenue Act of 1935, the Tax Collector may accept the payment of taxes on one parcel of real property,

which is separately assessed, provided the taxpayer pays all taxes on his personal property and provided such payment is equal to or greater than 25 per cent of the total amount of taxes due by him as of October 1 of each year, as required by Section 12 of said Act.

2. Section 47 makes it the duty of the Tax Assessor to ascertain what in his judgment is a fair and reasonable market value of each item of property returned by the taxpayer.

3. By Section 31, the taxpayer is required to make return "under oath and a full and complete list of all property of which he was the owner and must separately list the land and improvements."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 19, 1935, in which you state:

"In studying the Revenue Bill recently passed by the Legislature, I find that Section 12 and 169-A relating to partial payment of taxes conflict.

"Section 12 authorizes the payment of one-fourth ($\frac{1}{4}$) of the amount of tax due but prohibits the payment of less than this amount, while Section 169-A gives the taxpayer the right to pay on one or more pieces of property assessed to him provided same is valued separately.

"Please advise whether or not the two above mentioned sections would be applicable to 1934 tax which will be collected after October 1st.?"

"Where one or more pieces of property are assessed in one assessment, is it the duty of the Tax Assessor to determine the value of each piece of property? If one or more pieces of property are assessed in one assessment, would the taxpayer have the authority to pay taxes on one piece of property or would he be compelled to make a partial payment of not less than 25 per cent, of the total tax due in accordance with Section "12"?"

"Section 169-A states that where property is assessed and valued separately, the taxpayer has a right to pay on one piece of property. Does this mean that the taxpayer must make a return on each piece of property?"

In reply, I beg to quote Section 12 and Section 169-A of the 1935 Act to which you refer:

"Section 12. The Tax Collectors of the several counties of the State are authorized and required to accept any moneys tendered to

them in partial payment of ad valorem taxes collectible by them at any time before the sale of the properties liable therefor, provided that said payment shall be an amount not less than one-fourth of the total amount of taxes due, provided, however, that no such payment shall be made, nor shall same be accepted by the Tax Collectors, unless such payment shall amount to at least one-fourth of the total amount of taxes due on October 1st of each year hereafter. They shall credit the amount so paid first upon accrued interest and then upon the principal of the taxes owing. They shall give to the person paying the same a receipt for the amount so paid. Provided nothing herein shall be construed to postpone the payment of such taxes nor to waive any lien or right of enforcement of collection. The State Tax Commission shall prescribe the form of the receipt to be given hereunder."

"Section 169-A. Any person assessing more than one piece or parcel of real property which has been listed and valued separately on his assessment, that he shall first pay taxes on all personal property assessed by him in said assessment."

It is my judgment that these Sections must be read in *pari materia*. They were passed by the same Legislature at the same time as a part of the same Act and if they can be harmonized, they should be so construed as to give a field of operation to each.

Applying this rule of construction, it is my judgment, that in no case can a taxpayer pay less than 25 per cent of the total amount of his taxes due October 1st of each year. That should his property be separately valued and separately assessed, if the taxes on a portion of it are equal to or greater than 25 per cent of his total taxes, he can pay on one or more of the separately assessed parcels of real estate, but if he chooses to follow 169-A and pay on such separate parcel, before he can do so he must pay all taxes on his personal property, and such payment must be equal to or greater than 25 per cent of the entire amount due.

While the foregoing is not perfectly clear, the provision of Section 12, that no payment shall be made or accepted unless it shall amount to at least one-fourth of the total amount of taxes due, is so highly mandatory in its terms that I can draw no other conclusion.

I think that the foregoing is applicable to taxes which are collectible October 1st, 1935.

You next make the following inquiry, "where one or more pieces of property are assessed in one assessment, is it the duty of the Tax Assessor to determine the value of each piece of property?"

Section 47 provides:

"The assessor shall from information entered on the tax return list and from all other information known to him or which he may procure, proceed to ascertain what in his judgment is a fair and reason-

able market value of each item of property returned by or listed to any taxpayer."

The foregoing should answer your question. This statute has long been in our Revenue Law. What is an item, of course, depends on the circumstances. In one case, it might be an individual lot, in another it might be a 1000 acre tract. That, however, would be determined largely by the facts in a particular case.

Your next question has been answered fully, I believe above.

Your last question is answered by Section 31, which provides in short that the Taxpayer shall make return "under oath a full and complete list of all property of which he was the owner" etc. and this Section further provides "the land and improvements thereon must be separately listed." Section 39 provides in detail how real estate may be listed. I do not know exactly what you mean by "each piece of property". As provided by the statute, the taxpayer must give a full list of his property and the tax assessor must value each item. Presumably you intend for the word "piece" to have the same general application that the word "item" has, to-wit, a clearly divisible unit. If so, the taxpayer should have furnished this information on his original return.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 3, 1935.

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Deputy sheriff appointed under Local Act approved May 20, 1935, Elmore County, is a de facto officer even though he has failed to take the oath of office prescribed and make the bond and as such de facto officer is entitled to pay for his services rendered under said Act.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 23, 1935, in which you request my opinion as follows:

"Under a Local Act of the Legislature approved by the Governor on the 20th day of May, 1935, the Sheriff of Elmore County is authorized to employ an additional deputy to be stationed at Tallassee, the salary of such deputy to be paid out of the General Fund of the County.

"This deputy was employed and began serving on the first day of June, 1935, but to date he has not filed his oath of office or bond as required by the Act. The Act states that before entering upon the duties of his office he shall file with the Judge of Probate his oath of office and his bond.

"A claim has been filed with the Commissioners Court for the salary of this deputy for the month of June. Please advise us if we can legally pay this claim."

It is my opinion it would be proper for your County to pay this deputy his salary. We are unable to find where either of our courts of last resort have passed on this precise question. I do find, however, where other jurisdictions have had this question before them, and they seem to be about equally divided in their holdings, but I think there is no doubt but that he is a de facto officer and has been performing the duties of such office, and notwithstanding the fact that he has been negligent in the taking of the oath of office and executing the bond required by Section 3 of the Local Act of the Legislature creating this office, yet as he has assumed the duties and performed the services required of him, he becomes a de facto officer and in line with the former holdings of this office. I am of the opinion such de facto officer is entitled to his pay—Biennial Report of the Attorney General 1930-1932, pp. 114-959. Opinion of the Attorney General June 18, 1935, to Judge of Probate of Elmore County.

I call attention to the case of Waldrop, Clerk vs. Courson, Constable, 208 Ala. 189.

While this case is not on all-fours with the case we have here under consideration, yet its tendency goes a long way toward indicating what we might expect if the matter was before our Supreme Court.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 4, 1935.

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Under an Act of the Legislature approved June 18, 1931, General Acts 1931, page 325, before a county can pay for notice of the intention to introduce in the Legislature a local law, such law must be of interest to the County and the people as a whole, and not merely a private or individual bill.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 16, 1935, in which you request my opinion as follows:

"There was advertised in the Union Banner of Clanton, Alabama, an excerpt of two proposed local bills for Chilton County and these local bills were introduced, passed and became laws in the present session of the Legislature. A newspaper clipping of said two local bills are herewith enclosed and the Union Banner has filed a claim with the Court of County Commissioners for the payment of publisher's fees for these two advertisements.

"Will you please advise me whether or not by virtue of Acts of Legislature, 1931, page 325 and under the opinion of the Attorney General, 1932-34, page 207, it will be legal for the Court of County Commissioners to pay the Union Banner for advertising said two local bills? For identification I have marked clippings 1 and 2.

"Also the Union Banner has published two other notices of intention to introduce local bills and I might state further that these bills have not yet been made a law, but presuming that the said bills are passed by the Legislature and become a law, will you please advise me whether or not it will be legal for the Commissioners Court to pay the Union Banner for fees for publishing said two notices, and for identification purposes, I have marked said bills 3 and 4 and all of said clippings are herewith enclosed for your files."

Answering your request, I call your attention to an Act of the Legislature approved June 19, 1931, page 325. This Act which was intended to take care of matters we have here under consideration was loosely drawn. From the reading of the same, it has the appearance of being intended to take care of all local legislation of whatever nature, let it be of general nature to the county, or for private purpose, just so it was of local nature.

We cannot believe this was the legislative intent, but we are of the opinion it was intended to take care of only matters of which the county is interested and was not intended for the county to pay the publishing of private bills or bills of a private nature.

I note what you say about enclosing a copy of the notice published. I am not familiar enough with the circumstances connected with these bills to know whether or not the county has such moral or legal obligation to these parties so as to become responsible for these publications. This is a matter that must be decided by the Commissioners Court, however, this much is evident. Under the Act referred to above you cannot pay any of these bills until they become a law. You will note the last clause of Section 1, which is as follows: "Provided that such bills are introduced, passed, and become a law." **Biennial Report of Attorney General, 1932-34, page 207.**

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 5, 1935.

Hon. Gaston Scott, Chairman,
State Highway Commission,
Montgomery, Alabama.

Drivers' License—Act No. 331, approved September 3, 1935, construed.

1. Chauffeur license was repealed by General Revenue Law of 1935, and a driver for another would be required to take out a driver's license dependent on the type of vehicle he drove.

2. The driver of a truck for hire, a private truck, a bus for hire, or a private bus is required to pay a fifty cent driver's license. Such license would authorize him to drive his own personal car.

3. Where Mr. A owns an automobile, which neither he nor any of his family drive, his driver will be required to take out a twenty-five cent license.

4. If Mrs. B. owns a car and her daughter owns a car, but Mr. B owns no car but drives both, he will be required to take out a twenty-five cent license.

5. Where a non-resident comes into this State and drives a motor vehicle regularly licensed in Alabama, he would be required to obtain a proper driver's license.

6. Where a non-resident is the owner of a motor vehicle, duly registered in another State not requiring licensing of operators, he may on condition that he have in his immediate possession a registration card evidencing such ownership and registration in his home state or county, operate motor vehicles on the highways of this State for the same time and to the same extent as like exemptions are granted residents of this State under the laws of the home State or Country of such non-resident. Where such a non-resident is not the owner of a motor vehicle registered in States or Countries not requiring an operator's license he may operate on the highways of this State any motor vehicle properly registered in his home State or County, without driver's license or time limit, on condition that he be prepared at any time or place to prove lawful possession of the motor vehicle and proper identity.

7. Where D (the head of the family) owns no motor vehicle but drives a motor vehicle furnished by someone else, he is liable for driver's license of fifty cents or twenty-five cents depending on the type of motor vehicle driven.

8. A person securing a license for which fifty cents is required is authorized to drive any type of motor vehicle.

9. A Federal employee driving his own personal automobile is required to obtain the proper driver's license.

10. The Chief of the Highway Patrol has no discretion in revoking a driver's license of any person for a period of ninety days upon receipt of certified record of the Clerk before which proceedings were had in which any person was adjudged guilty of the offenses enumerated in the first part of Section 6 of said Act.

11. The latter part of Section 6 being Section 6 subsection (b), makes it discretionary with the Chief of the Highway Patrol to suspend the operating privilege of any person who was found guilty of the two offenses enumerated in subsection (b) of said Section 6.

12. A rural mail carrier or other Government employee using his own motor vehicle on the highways of this State, is required to obtain the proper driver's license.

13. The driver of a taxicab is required to take out a fifty cent driver's license. If the owner of the taxicab does not drive them himself, he is not liable for license.

14. Where a person has paid for a twenty-five cent license and he should afterward drive a truck or other vehicle for which a fifty cent license is required, the Act does not require him to take out a further or additional license fee of fifty cents. If such person, at the time of obtaining the license contemplated operating a truck and applies for a twenty-five cent license therefor, he is subject to prosecution under Section 10 (b) of said Act.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of September 16th, which is as follows:

"The Highway Commission is having a number of inquiries as to the provisions of Act No. 331 of the 1935 Legislature, (Driver's License), and I will thank you for your opinion on the following:

"1. When a driver is operating a truck for hire, is he required to buy a \$5.00 Chauffeur's License as provided by the Revenue Law, or should he buy a fifty cent Driver's License?

"2. When a driver is operating a private truck, does he buy a fifty cent driver's license, whether owner or employee?

"3. Does bus driver operating a bus for hire buy a \$5.00 Chauffeur's License under the Revenue Law or a fifty cent Driver's License?

"4. Does a bus driver operating a private bus buy a Chauffeur's License under the Revenue Act or a fifty cent Driver's License?

"5. Should a driver in any of the above stated cases be required to buy a Chauffeur's License under the Revenue Law, should he also be issued a Driver's License at no cost, and could he drive his own personal car on this driver's license, so secured?

"6. Where Mr. A. owns one or more automobiles and neither Mr. A. nor any member of his family drives, will Mr. A.'s driver be required to pay fifty cents or twenty-five cents for his license?

"7. Mr. B's wife owns a car and his daughter owns a car. Mr. B. owns no car, but drives both. What does Mr. B. pay for a license?

"8. Where a driver claims his residence in an adjoining state and has no driver's license law and drives a car occasionally in Alabama bearing Alabama license tag, would he be required to have an Alabama Driver's License?

"9. Where a driver entering the state from an adjoining state or any other state with tag of said state, and said state has no driver's license law, how long would the driver of said car be allowed to operate without a driver's license?

"10. Where Mr. B owns no motor vehicle and is the head of his household and drives an automobile furnished by his firm, or a friend's automobile, what does Mr. B pay for a driver's license?

"11. Where a driver secures a truck driver's license, is it necessary for him to purchase another license to drive a private car? In other words can an operator be required to have more than one type of driver's license?

"12. Under Section 5, sub division (1), will a Federal employee be required to buy an operator's license to drive his personal car?

"13. Please construe sub-section 3 of Section 5.

"14. Does Section 6 make revocation absolute or may the Chief of the Highway Patrol use his discretion as to revocation? Must the period of revocation be ninety days?

"15. Where a rural mail carrier or other Government employee uses his own car on his route and is paid a mileage fee for the use of same by the Government, would he be required to buy Driver's license?

"16. Does the owner of a number of taxicabs operated for hire buy a chauffeur's license under Revenue Law or a fifty cent Driver's License? What would drivers of said owner operating these taxis pay, \$.50 for chauffeur's license or twenty-five cent Driver's License?

"17. Where a driver does not own a motor vehicle, he buys a Driver's License and pays twenty-five cents for same. Afterwards, he secured a job driving a truck. Could he drive the truck on his twenty-five cent license or would he be required to buy another license to drive truck and pay fifty cents for same? If so, could he surrender his twenty-five cent driver's license and secure truck driver's license by paying twenty-five cents additional?

"I have asked a number of questions that seem clear from the wording of the Act, but will thank you for your official opinion so that we may answer these questions with authority."

Answering your questions 1 to 5, inclusive, I wish to say that by opinion of this office, addressed to Hon. B. L. Malone, Probate Judge of Morgan County, under date of Sept. 5, 1935, it was held, in short, that the General Revenue Bill, approved July 30, 1935, H. B. 324, not only contains no appropriate provision requiring a license to be paid by "chauffeurs," as defined in the Act, but also had the effect of repealing the prior Act of the Legislature requiring such a chauffeur license, and therefore, effective October 1, 1935, there is no requirement for a chauffeur's license.

It therefore follows that the persons mentioned in your questions 1 to 5, inclusive, would be required to pay a driver's license, for which they would pay the sum of fifty cents. After having obtained the appropriate driver's license, for which they should be charged fifty cents, such persons would be entitled to drive private passenger automobiles without taking out further driver's license.

In answer to your question 6, Section 2 of said Act No. 331 plainly provides that where the applicant for the driver's license is not the owner of the motor vehicle in question he shall pay a fee of twenty-five cents if the application is for license to drive a motor vehicle of the private passenger type; if the motor vehicle be a truck, bus or like type, he must pay a fee of fifty cents.

The answer to question 6 also answers your question 7.

In answer to your question 8, it is my opinion that under Section 5 of said Act No. 331, a non-resident coming into this state and driving a motor vehicle regularly licensed in Alabama would be required to obtain the proper driver's license.

Answering your question 9, Section 5 of said Act No. 331 provides, among other things, that "where such non-resident is the owner of a motor vehicle, duly registered in another State not requiring licensing of operators, he may, on condition that he have in his immediate possession a registration card evidencing such ownership and registration in his home State and Country operate motor vehicles on the highways of this State for the same time and to the same extent as like exemptions are granted residents of this State under the laws of the home State or County of such non-resident. Where such a non-resident is not the owner of a motor vehicle registered in States or Countries not requiring an operator's license he may operate on the high-

ways of this State any motor vehicle properly registered in his home State or Country, without driver's license or time limit, on condition that he be prepared at any time or place to prove lawful possession of the motor vehicle and proper identity."

The answer to question 7 suffices to answer your question 10 in part. The provision in Section 8 of said Act No. 331 that for each driver's license issued to the head of a family, for which fifty cents is charged, the applicant must pay the Probate Judge ten cents, does not, in my opinion, have the effect of requiring every person who happens to be the head of a family to pay fifty cents irrespective of whether he owns the vehicle involved. Section 2 provides that if the applicant is the owner of the vehicle he pays fifty cents, but if not the owner he pays either fifty cents or twenty-five cents, depending on the character of the vehicle involved.

In answer to your question 11, it is my opinion that the Act does not require a separate driver's license for each motor vehicle to be driven, but requires one driver's license, the fee being based upon the type of vehicle to be driven to some extent. It is my opinion that a person having procured a license to drive vehicles of the commercial type could drive a private passenger vehicle without procuring another license therefor.

Answering your question 12, a Federal employee driving his own personal automobile is required to pay for and obtain the appropriate driver's license.

Your question 13 is answered substantially by the answers to your questions 8 and 9. I might say further, however, that a resident of another State, which has no driver's license law, is required by Section 5 of the Act to obtain the appropriate driver's license, if he drives a motor vehicle which is not duly registered in his home State.

Answering your question 14, I wish to say that the first part of Section 6 of said Act 331, including subsection (a), is mandatory, and the chief of the State Highway Patrol has no discretion but to revoke for a period of ninety days the operating privilege of any person, upon receipt of the certified record from the Clerk of the Court before which the proceedings were had, in which the person in question was adjudged guilty of the offenses enumerated in the first part of Section 6. The latter part of Section 6, being Section 6, subsection (b), makes it discretionary with the Chief of the State Highway Patrol to suspend the operating privilege of any person upon receiving a certified record from the Clerk of the Court before whom the proceedings were held, in which the person in question was found guilty of the two offenses enumerated in subsection (b) of Section 6.

Answering your question 15, it is my opinion that a rural mail carrier, or other government employee, using his own motor vehicle on the highways of this State, is required to obtain the appropriate driver's license.—Biennial Report of Attorney General 1928-30, page 369.

Answering your question 16, I wish to say that the drivers of taxicabs are required by the Act to purchase driver's licenses for which they shall pay the license fee of fifty cents. If the owner of the taxicabs does not drive

any of them himself he would not be required thereby to purchase any driver's license but if he does drive any of the taxicabs he should obtain the driver's license and pay the fee of fifty cents.

Answering your question 17, it is the contemplation of the Act that one who shall be engaged in operating a motor truck shall obtain a driver's license, for which he shall pay fifty cents. If, however, the person shall have obtained a driver's license for which he shall have paid twenty-five cents as for a license to operate a private motor vehicle, and thereafter has occasion to operate a motor truck or like motor vehicle, there appears to be nothing in the Act to require him for that reason to take out a further or additional license for a fee of fifty cents. However, if the person obtaining the license knew at the time of making application therefor that he contemplated engaging in the operation of a motor truck, and concealed or withheld this fact, such person might be subject to prosecution under Section 10 (b) of said Act No. 331 as for wilfully making a false statement or wilfully concealing or withholding a material fact.

I trust that this suffices to answer your questions.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County
Montgomery, Alabama.

Drivers' Licenses.

1. The Owner of an automobile who does not drive is not liable for driver's license.
2. The so-called fees of fifty cents and twenty-five cents as used in the Act apply to the amounts charged for the types of licenses provided for by the Act.
3. The Probate Judge is entitled to a fee of ten cents for all licenses for which fifty cents is charged, and five cents for all licenses for which twenty-five cents is charged.
4. Any officer authorized to administer oaths may administer the oaths required of applicants. By the specific terms of the Act any clerk in the office of the Judge of Probate shall have authority to administer oaths required on applications for driver's license.
5. The fees of ten cents and five cents to the Probate Judge are all the compensation allowed to the Probate Judge for performing all

the duties prescribed by the Act, and he is not entitled to 2½ per cent of the license collected for remitting such licenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 21, 1935, in which you state:

"You will pardon me for taking up your time in reference to the House Bill 545, commonly known as the Automobile Drivers' License Act, No. 331.

"1. If the owner of an automobile does not drive the automobile but has a driver, is the owner required to have a driver's license?

"2. I call your attention to the following in Section 2: 'If the owner of the vehicle, the applicant shall pay to the Probate Judge, at the time of filing his application, a fee of fifty cents. If not the owner of a motor vehicle for the operation of which the license is sought, the applicant shall pay to the Probate Judge at the time of filing his application a fee of fifty cents if the application is for a license to drive a motor truck, motor bus or like motor vehicle; or a fee of twenty-five cents if the application is for a license to drive a motor vehicle commonly designated as a private passenger vehicle.' Is the amount paid to the Probate Judge a fee to him, or is it the price of the license?

"I call your attention with the foregoing to Section 8, which bears on the same subject: 'For each driver's license issued to the head of the family, for which 50c is charged, the Probate Judge shall be allowed a fee of 10c which shall be paid by applicant, and for each license issued for which 25c is charged, the Probate Judge shall be allowed a fee of 5c which shall be paid by applicant, which said fee shall include all compensation to the Probate Judge for performing all the duties herein prescribed.' Does this mean that a fee of 10c is allowed only, on those licenses issued to the head of a family, or is your interpretation that all licenses where a fee of 50c is charged, is 10c attached thereto, which is the fee of the Probate Judge, and does it mean that all licenses issued for 25c shall have a fee of 5c attached thereto, which is the fee of the Probate Judge?

"3. It will be noted in the latter part of Section 8, the following: 'The Probate Judge or any clerk in said Probate Office shall have the authority to administer oaths required on said application and no charge shall be made for such services.' Does that mean that only the Judge of Probate or a clerk in his office has the authority to administer the oath required of the applicant. My interpretation of this is that any officer authorized to administer oaths has the right to administer an oath the same as the Judge of Probate or a clerk in his office. Am I right in this construction? The question is asked, as there are a number of firms and corporations who have their own notaries public who would not charge any fee for making the certificate, and will relieve the conges-

tion that will be caused by the interpretation of the requirement that only the Judge of Probate or the clerks in his office can make the certificate.

"You will note in Section 8, the following: 'The license fee collected shall be remitted to the State Treasurer on or before the fifth day of each month.' Will you kindly tell me whether or not the Judge of Probate shall deduct from the amount $2\frac{1}{2}$ per cent of the fees collected?

"4. In what section of the bill does it provide for the price of the license? It speaks of it in Sections 2 and 8—in Section 2 as a fee paid to the Judge of Probate upon the filing of the application asking for a license, but even Section 8, as I read it, does not clearly state that the fee referred to in Section 2 is the price of the license, although in Section 8, it does say that the license fee shall be remitted to the State Treasurer.

"Will you kindly give me a prompt reply to the foregoing questions so that I can govern myself accordingly on and after the first of October? You can see how necessary it will be, as there are probably 50,000 or 60,000 licenses of different kinds issued in this County."

Answering question No. 1, it is my opinion that this is a license on drivers and if the owner of the automobile does not actually drive himself, he is not liable for driver's license.

In answer to question No. 2, while the language of the statute refers to the amount for the license, as a fee, I think from reading the entire Act that it is very clear that the so-called fees of fifty cents and twenty-five cents refer to the amount of licenses to be paid and are separate from the Probate Judge's fee provided by Section 8. In my opinion the amounts of fifty cents and twenty-five cents are not fees to the Probate Judge, but are the prices of the two types of licenses issuable. While the Act is not carefully drawn, I am of the opinion that the words "head of a family" in Section 8, and "owner of the vehicle" as used in Section 2, are intended to have the same application both under the Act requiring the payment of fifty cents, if such owner or head of the family actually drives. It is very clear however that if the head of the family or owner actually does not drive, he is not liable for any license. Likewise, from reading the entire Act, if the automobile is actually owned by some other member of the family, such owner should pay the fifty cents license and the head of the family would be liable for the twenty-five cents license if such head also drives.

It is, therefore, my opinion that the fee of ten cents applies on all licenses for which fifty cents is a proper charge and the fee of five cents applies to all licenses for which twenty-five cents is a proper charge.

Answering question No. 4, it is my judgment that the provision that the Probate Judge or any clerk in said office shall have authority to administer oaths required on said applications and no charge shall be made for such services, does not prevent or forbid the right of any officers authorized to ad-

minister oaths, to take the affidavit required on such applications. Of course, this does not relieve the Probate Judge of his duty of passing on the qualifications of the applicant.

The question has been asked whether a clerk in the office of the Probate Judge, who is not a notary public or otherwise authorized to administer oaths, has the right to administer oaths under this Act. The statute specifically so authorizes and I, therefore, so hold.

In your next question you ask whether the Probate Judge is entitled to the 2½ per cent for remitting the licenses collected under this section. I think this is answered by the first paragraph of Section 8, which is as follows:

"For each driver's license issued to the head of the family, for which fifty cents is charged, the Probate Judge shall be allowed a fee of ten cents which shall be paid by applicant, and for each license issued for which twenty-five cents is charged the Probate Judge shall be allowed a fee of five cents which shall be paid by applicant, which said fee shall include all compensation to the Probate Judge for performing all the duties herein prescribed."

This apparently is exclusive compensation to the Probate Judge and I therefore, hold that the usual compensation of 2½ per cent for remitting license taxes does not apply to the driver's license. This is a special Act passed subsequent to the General Revenue Bill and contains this provision, and it appears to me to be the clear legislative intent that the compensation herein provided is exclusive.

I believe your last question is answered by the foregoing.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1935.

Hon. Fleetwood Rice,
Judge of Probate,
Tuscaloosa County,
Tuscaloosa, Alabama.

Juries—National Guard officer disqualified from serving as Member of Jury Board under Act No. 47, House Bill No. 70, approved February 20, 1931 (Acts 1931, p. 55.).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 19, 1935, in which you state that an officer in the National Guard, who receives compensation while on duty,

has recently be appointed by the Governor as a Member of the Jury Board of Tuscaloosa County.

In view of the above you request my opinion as follows:

(1) Is said officer qualified to hold the office as Member of the Jury Board?

(2) If disqualified, would a jury box filled by him and other members be valid?

I am of the opinion that your first inquiry should be answered in the affirmative.

The jury boards in this State function under Act No. 47, H. B. No. 70, approved February 20, 1931 (Act 1931, p. 55). The qualifications of its members are set out in Section 2 of said Act, which provides as follows:

Section 2. That each of said Jury Boards shall be composed of three members who shall be qualified electors of the county in which they are appointed and shall be men reputed for their fairness, impartiality, integrity and good judgment. **Members of the Board shall not during the term for which they are appointed and during their tenure in said office hold any other office by appointment or election or perform any other public duty under the federal, state, county or municipal government, which carries with it any compensation whatsoever.** (Italics supplied).

It will be noted from the above that the disqualification is extremely broad. It is not confined to those holding an office by appointment or election, but extends to those who perform any duty under the federal, state, county or municipal government, which carries with it any compensation whatsoever. An officer in the National Guard clearly comes within the disqualification.

I am of the opinion that your second inquiry should be answered in the negative. It has been held that a jury venire is not subject to motion to quash because a member of the commission at the time of his appointment held another office.—*Vincenzo, et al. v. State*, 1 Ala. App. 62, 55 So. 451. See also *Spraggins v. State*, 139 Ala. 93, 35 So. 1000; *Sims v. State*, 146 Ala. 109, 41 So. 413.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

October 8, 1935.

1. A vacant lot or building used as an adjunct to the central place of business conducted by an automobile dealer principally for the stor-

age of cars when the books and all business matters connected therewith are at the central place of business, is not, in the absence of special facts showing otherwise, a separate place of business and liable for separate license.

2. The State Tax Commission is authorized to issue demonstration tags only to "licensed dealers."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 27, in which you state:

"Schedule 12, House Bill 324, Revenue Act 1935 provides for a license "upon each and every agent of and/or dealer in, and upon every person soliciting orders for the sale or purchase of motor cars, etc. for each place of business.

"(1) A number of dealers in automobile, etc. operate what are known as used car lots. These lots are located in various parts of the city and are used for the storage of used cars for display to prospective customers. Sales of these used cars may be negotiated at the "used car lot" but completed at a central place of business. It is claimed no business other than the display of the cars, and negotiation of sale is transacted at the "used car lot", all bookkeeping and other business incident thereto being carried on at a central location. Please advise if, under the facts herein set out, such "used car lot" would be a separate place of business that would require a license under schedule 12, House Bill 324.

"(2) An automobile dealer may, instead of using an open lot for the display of used cars, rent another building and there store used cars under the same conditions as set out in (1) supra. Would such a building be regarded as a separate place of business?

"(3) Under subsection (B) Section 350, General provisions of the Revenue Bill, "there is also hereby levied for the use of each county in the state a license or privilege tax upon each person, firm, etc., of fifty per cent of the state license or privilege tax, except as herein provided." Under schedule 12, House Bill 324, it is provided that, "upon payment of the license according to the foregoing schedule, a dealer in automobiles may do a general automobile and automotive business and not be required to pay any additional state and county license to handle or sell automobiles, accessories and parts, radios, tires and batteries, or for the operation of a garage for storage where a charge is made, or for the repair or painting of motor vehicles or trucks." Please advise us automobile dealers who have paid the license according to schedule 12, House Bill 324, are required to pay an additional license in each county in which they do business, or whether the provision quoted above exempts such dealers from the payment of the county license.

"(4) In the event automobile dealers are liable for a separate license in each county and this matter is appealed by automobile dealers

for a decision by the court, would the State Tax Commission have authority to issue "demonstration tags" to such dealers for the use of their salesmen in the several counties pending decision by the courts of the question of liability of the dealers for the county license.

"We shall appreciate it if you will give this matter your early attention and let us have your opinion as soon as possible."

In reply, I beg to advise that the answer to question 1 will depend, to a large degree upon the exact facts applying in each individual case. If the storage of the cars in a lot separate from the central place of business is merely for the purpose of storage and display, and the business transactions with reference thereto, such as the keeping of the books, the actual selling, the general records and all matters directly concerning the business other than the mere storage or display of the cars are conducted at the central place of business, I am of the opinion that the "used car lot" would not be a separate place of business and not due a separate license. As stated, however, the particular mode of business in a particular case would have to decide, the matter being purely a question of facts.

The same answer, in my judgment, would apply to your question 2. The inquiry in both places is, whether or not there is an actual separate place of business, and this is to be determined upon all of the facts.

In answer to question 3, I beg to enclose copy of opinion to Judge M. M. Fountain, Monroe County.

Answering question 4, I advise that Schedule 12, to which you refer, provides in part, "provided further that the automobile dealer who has a license under this Schedule shall be permitted to purchase one demonstration tag for each salesman he so employs.

It is apparent that before a dealer is entitled to the demonstration tags he must be a licensed dealer and it is therefore my opinion that there is no authority for the State Tax Commission to issue demonstration tags unless a dealer actually secures a proper license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

October 9, 1935

School Funds cannot be legally expended on permanent improvements of school building not owned by proper school authorities.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 28, 1935, which is as follows.

"I am in receipt of a letter from Hon. W. R. Young, President of the Board of Education, Bibb County, which I quote below:

'Referring to our conversation in your office yesterday, I will thank you very much if you will secure a ruling from the Attorney General's office relative to the expenditure of school funds for the erection of buildings, additions, painting and equipment upon lands not owned by the State.

'The proposition is this: The Bibb County Board of Education contemplate borrowing \$55,000.00 and securing a grant of \$45,000.00 from P. W. A. to be used for building purposes. We have a request from the school authorities at Piper requesting us to build an addition of four class rooms to their present building, the same to be equipped completely and the entire building to be painted. Total cost from \$10,000.00 to \$12,000.00.

'The land upon which their present school building is located upon is owned by private parties and leased to the Little Cahaba Coal Company, the usual mining lease being in force, providing for termination in the event the royalties, etc., are not paid. The Little Cahaba Coal Co., proposes to sub-lease the land upon which the present building is located on, about five acres, to the Bibb County Board of Education for use as school purposes only for term of fifteen years.

'Can school funds be expended, legally, under the above conditions?"

"I wish to advise that in a former opinion you have ruled that the County Board of Education had no authority to pay out State or County Funds in improving or repairing a school building that was not owned by the State or County.

"I have taken the position that a County Board of Education has no authority to repair or improve a building which they have leased.

"Please advise whether or not the Board of Education has authority to spend county funds in making additions or improving a building which is owned by a private concern but has been leased by the County Board of Education."

I am of the opinion that the position taken by you is correct. I do not think that school funds can be legally expended for the purpose of making permanent improvements on school buildings not owned by the County Board of Education.

In taking this position I am following the uniform ruling of this office. On April 30, 1927, in an opinion addressed to the County Superintendent of Education of Lauderdale County, Ex-Attorney General McCall held:

"However, I wish to inform you that the repeated rulings of this office have been to the effect that public school funds, districts or county, cannot be used in making permanent improvements in or on a privately owned school building, even though same is devoted to public school purposes."

I also refer you to an opinion rendered to Judge Chas. E. McCall on October 15, 1925 (Biennial Report Attorney General 1924-1926, p. 261) wherein it is held to like effect.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 9, 1935

Hon. Chas. E. McCall,
State Auditor,
Capitol.

Board of Registrars — Members not required to obtain commission under Section 2579, Code of 1923.

Bonds — Jury Commissioners and Registrars of voters not required to execute bond under Act No. 191, H. B. 344, approved April 20, 1933 (Acts 1933, p. 203).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 3, 1935, which is as follows:

"Please advise whether there is any provision of law that a Registrar of Voters, as appointed under Section 370, Code of Alabama, 1923, is required to be commissioned as an officer.

"Please also refer to Acts of Legislature of 1932, pages 104 and 284 and to Section 16 of each of those Acts, and also to the Acts of the Legislature of 1933, page 203, and advise whether or not the members of the Board of Registrars or Jury Commission are required to give bond."

I am of the opinion that your first inquiry should be answered in the negative.

Section 2579, Code of 1923, provides that certain officers, therein enumerated, must obtain a commission. A Registrar of Voters or a member of the Board of Registrars is not one of those officers specifically enumerated. In construing Section 2579, *supra*, the Supreme Court held that a commission is required of only those officers mentioned therein, whether such officers are elected or appointed, **Draper v. State**, 175 Ala. 547, 57 So. 772.

I am also of the opinion that your second inquiry should be answered in the negative.

Act No. 110, H. B. 1, approved October 2, 1932 (Acts 1932 p. 104) regulated, provided for and required bonds of county officials and employees, and clerks, deputies and employees in county offices. This Act was amended by Act No. 290, H. B. 689, approved November 9, 1932 (Acts 1932, p. 284). Section 16 of both the original and amended Act provided that the official bonds of each Jury Commissioner and each Registrar of Voters shall be in the sum of \$500.00.

Act No. 191, H. B. 344, approved April 20, 1933 (Acts 1933, p. 203) further regulated, provided for and required bonds of county officials and employees, and clerks, deputies and employees in county offices. In this Act there was no provision for the bond of Jury Commissioners or Registrars of Voters.

The 1933 Act, though not amendatory in form, covered the entire subject-matter of the bonds of county officials and employees, and clerks, deputies and employees in county offices. It also contains the usual repealing clause "that all laws or parts of laws in conflict with the Act be and the same hereby repealed."

An Act seeking to deal fully and completely with the entire subject of a former statute takes the place of and repeals the provision of the former. In other words, when the provisions of a statute cover the entire subject-matter of a former statute and are clearly intended as a substitute for all the provisions of the former, the former statute is repealed, regardless of the inconsistency or repugnancy of the statutes. — **Levy, Aronson & White v. Jones**, 208 Ala. 104, 93 So. 733; **State v. Kirkpatrick**, 19 Ala. App. 50, 95 So. 409, cert. den. 209 Ala. 16, 95 So. 494.

The premises considered, it is my opinion that the 1933 Act, *supra*, repealed the 1932 Act, *supra*, therefore, the Jury Commissioners and Registrars of Voters are not required to execute bond as they were omitted from the 1933 Act, *supra*.

However, should the Court of County Commissioners, Boards of Revenue or other like governing body determine that it is to the best interest of the county that such officials be placed under bond that such governing body is vested with the authority to require a bond and fix the amount thereof. Such authority is provided for in Section 3 of the 1933 Act, *supra*, which section is as follows:

"Section 3. The Court of County Commissioners, Board of Revenue or other like governing bodies of the respective counties are hereby authorized and empowered to fix and approve the official bonds of all other county officials and employees, and clerks, deputies and employees

in county offices in such an amount or amounts as may in their judgment be necessary for the safety and security of public funds or other funds and as the public interest may demand subject to such limitations as are specifically provided herein and made applicable to each particular county official."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 10, 1935

Hon. H. W. Clayton,
Clerk of the Circuit Court,
Marshall County,
Guntersville, Alabama.

Counties — Under Act No. 379, House Bill 191, approved September 9, 1935, only the Judge of Probate, Chairman of the Board of Revenue or other governing body, or such officer as may be designated by such board, may issue warrants payable out of County Treasury or County Depository.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your telegram of September 18, 1935, in which you request my opinion as follows:

Under the so-called County Budget Act (Act No. 379, House Bill No. 191), approved September 9, 1935) will it be your duty, as Clerk of the Circuit Court, to issue warrants on the County Depository for pay for services of jurors and bailiffs as heretofore or must you issue an order to the Chairman of the Board of Revenue to issue warrants in question?

The answer to your inquiry is governed by Section 5 of Act No. 379, House Bill No. 191, approved September 9, 1935, which provides as follows:

Section 5. — WHO SHALL ISSUE WARRANTS? No warrant shall be issued or check drawn on the County Treasury or County Depository by any person except the Judge of Probate or Chairman of the Board of Revenue, or like governing body, or such other officer as may be designated by such Board; and officers who are authorized to pay claims which have not been first approved by the Board shall issue orders for warrants or checks which must be presented to the officer so authorized to issue warrants payable out of the County Treasury or County Depository."

It will be noted from the above that warrants can be drawn by **only** the Probate Judge or Chairman of the Board of Revenue, or like governing

body, or such officer as may be designated by such Board. In cases where the claims do not have to be approved by the Board, the officer who was heretofore authorized to issue warrants must now issue orders for warrants which must be presented to the officer authorized to issue warrants payable out of the County Treasury or County Depository.

Specifically answering your inquiry, I am of the opinion that you must issue orders for the warrants in question, which must be presented to the officer authorized to issue the warrants and who in turn issues warrants.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 11, 1935

Hon. U. G. Jones,
Deputy Solicitor, Elmore County,
Wetumpka, Alabama.

Section 425, et seq., of Code authorize the Court of County Commissioners to readjust the boundaries of election precincts whenever such readjustment has reasonable relation to the requirements of the statute that not more than 300 voters shall be contained in one election precinct.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I have your letter of September 16, 1935, in which you request my opinion on the following question:

"Does the Commissioners Court of Elmore County, Alabama have authority to make such changes in beat or precinct lines in the county as, in the judgment of the court, may appear proper, without regard to the number of voters in the beats or precincts to be affected?"

In my opinion the statutes do not give the Court of County Commissioners such unlimited authority in that regard.

Section 425 of the Code provides:

"425. Election Precincts. The counties of this State as now divided into election precincts, and the boundaries of such precincts as now defined, shall so remain until changed by order of the court of county commissioners or board of revenue, or other governing board of the county. Whenever such election precincts, as now existing, contain more than five hundred legal voters, said election precincts shall be divided or subdivided into election districts."

Touching further the authority to re-arrange precinct lines, Section 428 provides:

"428. Precincts or Districts: Now changed. — Whenever, at any general or primary election in any election precinct or district, over three hundred votes shall have been cast, the court of county commissioners or board of revenue, or other governing board of said county shall readjust the boundary lines of said election precincts or election districts and may divide or consolidate any number of precincts or districts and resubdivide the same in order that not more than three hundred voters shall be contained in any one election precinct."

These and connected sections, Sections 425-436, do not appear to have been construed in this regard by the higher courts, but, taken together, their purpose is fairly clear. It appears to be the purpose of these provisions to bring about a certain degree of uniformity in the election process and to expedite the conduct of elections by requiring that the number of voters in any one district within the established precinct shall not normally be in excess of three hundred. The Court of County Commissioners is, generally speaking, a court of limited jurisdiction, and the authority granted it by these sections should be interpreted with regard to the apparent purpose of the statutes. Section 425 is not a general delegation of express authority, but simply provides that the boundaries of all election precincts should remain as they were at the time the code was adopted until properly changed by the governing body of the County. Section 428 is more expressive of the legislative purpose, and the authority conferred, in requiring such governing body of the County, whenever more than three hundred votes are cast in any election precinct or district, to readjust the boundary lines of such precincts or districts by division or consolidation of precincts or districts, **to the end that not more than three hundred voters shall be contained in any one election district.**

It is therefore my opinion that these statutes authorize the Court of County Commissioners to readjust the boundaries of election precincts, not at will or capriciously, but in a manner having reasonable relation to the requirement of the statute that not more than three hundred voters shall be contained in any election district. When this proper relation of the occasion of the readjustment to the purpose of the statute exists, the Court of County Commissioners may consolidate precincts or districts or change their boundaries in any appropriate manner which in its discretion it deems advisable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. B. D. G. Waddell,
Deputy Solicitor,
Seale, Alabama.

October 14, 1935

Public Officers — Temporary change of domicile does not disqualify citizen for public office.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of August 27, 1935, in which you ask in substance, does the temporary removal from a city, with no intention to establish a new or permanent residence compel such loss of citizenship in the city, from which the citizen has removed, as to disqualify him to hold public office? You enclose an affidavit as follows:

"Columbus, Ga.
July 27, 1935.

"Attorney General,
Montgomery, Alabama.

Dear Sir:

"This is to certify that Mr. C. C. Slocumb of Phenix City, Alabama, has been employed by the Eelbeck Milling Company for several years and working the city trade with Eelbeck Products. On account of a very large crop of corn in the section of Eelbeck Mill last season I insisted on Mr. Slocumb coming out and staying at the mill for four or five months on account of being convenient in handling the local corn meal. Mr. Slocumb owns his home in Phenix City, and stated at the time that he would only be willing to live at Eelbeck until July 1st, something like a camping place. At no time has Mr. Slocumb intended to move his former residence or citizenship from Phenix City.

Yours very truly,
EELBECK MILLING COMPANY,

By: C. R. Mehaffey,
C. R. Mehaffey, Pres.,
By: L. N. McPherson,
L. N. McPherson, V. Pres.

Edel Maggie Roberts,
N. P.

In my judgment the two controlling factors that answer this question are the **intention** of the removing citizen as to the **permanency of such removal and the actual removing** of the citizen to the new domicile. Two factors necessary to perfect a change of domicile are: the intention of the citizen to change his residence permanently, and the actual removal of the citizen to such new residence. These two factors must co-exist, however, but intention seems to be the controlling of the two.

Section 366, Code of Alabama, 1923, provides as follows:

"Residence not acquired or lost by temporary absence. — No person shall lose or acquire a residence either by temporary absence from his or her place of residence without the intention of remaining, or by being a student of an institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence, or by being absent from his or her place of

residence in the civil or military service of the state, or the United States; neither shall any soldier, sailor or marine, in the military or naval service of the United States, acquire a residence by being stationed in this State."

In the case of *Boyd vs. Beck*, 29 Alabama 703, the Court said:

"In the case of the State, ex rel. *Spence v. The Judge of the 9th Judicial Circuit*, 13 Ala. 805, it was decided that 'where one has acquired a fixed domicile, a temporary absence on business or pleasure, with the intention of returning, and actual return in accordance with such intention, will not work a change of domicile.' *Sears v. The City of Boston*, 1 Metc. 250; *Bampde v. Johnstone*, 3 Vesey, Jr., 198. Where persons conduct a business at two or more places, devoting a portion of their time to each, the intention of such persons, when it can be ascertained, exercises a controlling influence in determining the domicile. — Story on Conflict of Laws, Section 47; *Harvard College v. Gore*, 5 Pick 370; *Somerville v. Lord Somerville*, 5 Vesey, 787-8-9." (Emphasis supplied).

In the case of *State v. Hallett*, 8 Ala. 159, the rule is stated as follows:

"The question presented upon the record, has always been considered one of great moment, and has given rise to much discussion, and ingenious, subtle reasoning, both in the civil and common law. It appears, however, to be well settled, that when a domicile has been acquired, it is not lost until a new one is actually gained, *facto et animo*. The mere intention to change the domicile, without an actual removal, with the intention of remaining, does not cause a loss of domicile." (Emphasis supplied).

I further refer you to the case of *Polk vs. Howle*, 227 Ala. 154, in which the Court discusses the question in the following language:

"The effect of these cases may be thus stated: When the fact of the legal residence of a citizen is once established, such fact of residence is presumed to continue, and this presumption prevails until it is established by the evidence that he has elected to or has established a residence at or in another place. It may further be stated that, while the determination of the place of legal residence of a citizen presents a question of fact, yet in determining that fact, the intention of the citizen presents a question of fact, the intention of the citizen is entitled to and must be given due consideration in connection with his relevant acts. It is this combined result of intention and acts — speaking for the voter of his actual domicile, official residence as a citizen and as an elector, seeking to cast or undertaking to cast his vote — that determines the right to vote in such precinct.

In the instant case and under the facts as stated coupled with a careful consideration of the above cited authorities, it is my judgment that the facts as stated do not within themselves operate to disqualify the citizen from holding the office of City Commissioner of Phenix City, if elected to the said office

I wish to further refer you to the following opinions of the Attorney General:

Biennial Report 1930-32, page 718, opinion rendered to Hon. E. C. Croley, DeKalb County, February 25, 1932. Biennial Report 1928-30, page 728, opinion rendered to Hon. Posey Smith, Coosa County, January 10, 1930, and to the authorities cited in these opinions.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 14, 1935

Hon. B. L. Malone,
Judge of Probate,
Morgan County,
Decatur, Alabama.

1. Under subsection 3 of Section 353 of the Revenue Act of 1935, all licenses payable to the Probate Judge bear interest at the rate of 6% from the date of delinquency.

2. Said Act does not provide for a chauffeur's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 24, in which you state:

Sub-section (c), Section 353 of the new Revenue Bill provides as follows: All licenses levied by this Act except as otherwise provided Where any license issuable by the Probate Judge or Commissioner of License shall be delinquent, the same shall be subject to a penalty of 15 per cent of the amount of the license, which penalty must be collected by the Probate Judge or Commissioner of Licenses when the license is taken out together with interest at 6% from the date of delinquency. Sub-section (e) provides: The Probate Judge in remitting such penalties shall file report . . . showing the amount of such penalties collected, from whom, and for what, the amounts paid to the License Inspector and the amount remitted, etc.

"Please inform me if the 6% interest should be collected on all delinquent license, that is, automobile, privilege, etc., and to whom the 6% is remitted. Also advise if the 15% penalty as provided in Sub-section (c), Section 353, is payable to the License Inspector.

"I fail to find the levy of a Chauffeur License, yet Schedule 158.4, page 331 of the New Revenue Bill provides that 'drivers of automobiles, hearses and ambulances shall be required to secure chauffeur's license.'"

In answer to question one, I advise you that the 6% interest provided in sub-section 3 of Section 353 of the Revenue Act of 1935 applies to all delinquent licenses whether automobile, privilege or otherwise, and payable to the Probate Judge.

With reference to payment of penalties to the license inspector, I advise that this question is still under consideration. Copy of opinion will be mailed you when the same is finally approved.

In answer to your third question, the Act does not provide for a chauffeur's license, and hence that provision of Schedule 158.4 providing that "drivers of automobiles, hearses and ambulances shall be required to secure a chauffeur's license" is in my opinion without force and effect. It is true that Section 411 of the Act provides that all laws or parts of law in conflict with the provisions of this Act are hereby repealed, provided that all provisions of existing laws relating to taxation and revenue, which are not in conflict with the provisions of this Act and which are not herein expressly repealed are hereby repealed, casts some doubt on this provision. However, the chauffeur's license required by the present law was incorporated in the Motor Vehicle Act of 1923 as Section 25. This Act is entirely rewritten in the Revenue Bill of 1935 with the provision requiring a chauffeur's license omitted. It seems to me that there was an attempt on the part of the Legislature to give a complete treatment of the subject and that the omission of the chauffeur's license was purposive, and hence by clear implication of law the same was repealed.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 15, 1935

Hon. J. W. Brock,
Clerk and Register,
Circuit Court of Coffee County,
Elba, Alabama.

Clerk of the Circuit Court — form of statement and claim for
ex officio fees.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion of recent date as follows:

"I hereby request your official opinion upon the following question:

"Section 7280 of the Code of 1923 provides for the Ex Officio fees of the Clerk of the Circuit Court and the determination thereof.

"Section 7282 provides how the same are paid, allowed and reduced by the Commissioners Court. In part it provides:

"Such statement must contain a detailed report of all services rendered, showing the charge made for each item, and if the Court of County Commissioners or other Court of like jurisdiction, finds said statement correct and the charges made reasonable, they will draw a warrant for same."

"As you know, Coffee County is a County in which the Circuit Court is held at two places and where the Clerk keeps an office, etc., at two places in the County.

"1. Please advise me in detail the items which I must show on my sworn statement or report, made to the Commissioner's Court, for the allowance of my Ex Officio fees; that is to say, for what items or services ex officio fees be allowed.

"2. Also, please advise in detail if each item must be itemized, as to the amount claimed, separately."

Your first inquiry may be answered generally by reference to the definition of ex officio claims. In Calhoun County vs. Watson, 152 Ala. 554, 44 So. 702, the Court in speaking to the question said that "no service rendered by a Circuit Clerk could be an ex officio charge unless it was for the performance of some duty required by law, and then only in case no fee was specified therefor, and upon the further condition that it could not be taxed as costs against the plaintiff or defendant."

An examination of the original record of the Supreme Court in the Watson case, supra, discloses that the Court approved as proper items for which the Circuit Clerk may make ex officio charge, the following:

Preparation of civil trial docket;

Docketing and setting cases thereon for trial;

Preparation and keeping of civil subpoena docket;

Preparation and keeping of civil fee books and keeping accounts therein;

Preparation of State trial docket and docketing and setting cases for trial;

Preparation and keeping State subpoena docket;

Preparation and keeping of State fee book and keeping accounts therein;

Preparation and keeping of execution docket;

Preparation and keeping of motion docket;

Issuing Jury venires;

Administering oaths to bailiffs, jurors and witnesses;

Issuing bailiffs certificates;

Issuing jurors certificates;

Making reports to the Governor;

Making reports to the Chief Justice of the Supreme Court.

The foregoing list of items is not all inclusive of the services of the Clerk for which ex officio compensation may be claimed. For example, issuance of subpoenas for witnesses to appear before the Grand Jury in cases where no indictment is returned (Biennial Report of Attorney General 1918-20, p. 630), and making and keeping direct and reverse indices to the books and records pertaining to the office, are items for which such compensation may be allowed. No doubt many other services which come within the definition laid down in the Watson case, *supra*, will readily occur to you.

Your second inquiry must be answered in the affirmative. Section 7282 of the Code of 1923, provides that the Clerk shall present to the Commissioners Court a sworn statement that he has performed all ex officio duties required of him; and that "such statement must contain a detailed report of all services rendered showing the charges made for each item. * * *."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 16, 1935

Hon. L. C. Garrison,
Judge of Probate, Walker County,
Jasper, Alabama.

(1) Deed from trustee in Bankruptcy to private corporation requires deed filing tax, when offered for record.

(2) When such deed describes the payment of a certain amount over and above a certain mortgage or deed of trust assumed the amount of such mortgage is not deductible.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"There has just been filed in this office a deed by a trustee in bankruptcy covering certain real estate. The person filing the deed has the opinion that he should not pay the state deed filing tax.

"Will you please render an opinion by early mail, for which you have my thanks in advance.

"There is attached hereto copy of the deed, excepting description of the property and acknowledgement."

The deed which you enclose after overruling the petition for an adjudication of Bankruptcy states:

"Whereas, the said **George Collamore as Trustee** in bankruptcy of the estate of Manchester Coal Company, bankrupt, was duly authorized, after notice to the mortgage bondholders, lienors and creditors, by an order of George P. Bondurant, Referee in Bankruptcy, dated December 19th, 1934, to sell and convey the property hereinafter mentioned, at public auction, free and clear of liens except only the lien of that certain chattel deed of trust dated September 1, 1928, and filed for registration in Walker County, Alabama, September 28, 1928, and of record in Book 312, page 261, and the said sale having been held at Birmingham in the County of Jefferson, State of Alabama, on the 19th day of December, 1934, and having thereafter been confirmed by an order of George P. Bondurant, Referee in Bankruptcy, dated the 19th day of December 1934.

"Now, Therefore, know ye, that I, the said George Collamore, as Trustee in Bankruptcy of Manchester Coal Company, bankrupt, by virtue of the power and authority in me vested, as aforesaid, and in consideration of the sum of Forty-Five Thousand (\$45,000) Dollars, to me in hand paid by the said Southern Coal Company, party of the second part, receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Southern Coal Company its successors and assigns forever, all those certain tracts or parcels of land, with the buildings thereon standing situated in Walker County, Alabama, to-wit."

The statute (Section 21½, Acts 1927, p. 139) provides that "no deed . . . shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit: upon all such instruments which are executed to convey real or personal property situated in the State of the value etc.

It appears therefore by the express terms of the statute all deeds offered for record are due the tax. In the present case the Southern Coal Company is the grantee and it or someone for it, files the instrument. It is therefore taxable.

As I read the conveyance, the \$45,000.00 paid, is in excess of the chattel deed of trust described, which is assumed and there would be no deduction on account of it, the full value of the property being \$45,000.00 plus the indebtedness secured by such deed of trust.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Seale, Alabama.

An individual engaged in the manufacture and sale of lumber operating a commissary in connection therewith is liable for store license on such commissary.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 13th, in which you state:

"Please advise me if a license tax or open door license is chargeable against a corporation or individual engaged in the manufacture and sale of lumber, other than the regular license collectible against manufacturers and dealers in lumber, where the corporation operates a commissary in connection with the lumber business.

"This corporation carries feed for the mules used in connection with the lumber business, belts and other saw mill supplies, furnished to the agents operating the mills of the corporation, but does not sell to the general public.

"Feed and other mill supplies are charged against the account of the different agents and sub-contractors.

"The question is, must the corporation in addition to paying its license for operating a general lumber business, pay also an additional license in the way of an open door license for operating its commissary.

In reply, I beg to advise that it appears that this Company is selling goods, wares and merchandise other than lumber for which it is specially licensed and, therefore, in my opinion, would be liable for the store license commonly called the "chain store license." I presume that is what you mean by the "open door license".

Of course, if the company sells other products for which a separate license is required, it would be liable for such license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935

Hon. N. P. Tompkins,
Judge of Probate,
Colbert County,
Tuscumbia, Alabama.

1. Under provisions of Section 271 of the Revenue Act of 1935, the owner or anyone interested may redeem a portion of his property which has been sold for taxes.

2. The provision for redemption on partial payment plan applies to all sales for the State made prior to January 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 13th, in which you state:

"1. It seems that the new revenue act approved July 10, 1935, provides that the owner of real estate sold for taxes may redeem any part of such real estate included in the assessment without redeeming all the property assessed. Please advise whether I am correct in this assumption and also whether this partial redemption provision applies to sales made prior to this act.

"2. It appears that the rate of interest in the new act is Six per cent. Please advise whether this rate of interest applies to redemption of property heretofore sold for taxes before this act became effective. Also please state whether the six per cent interest should be charged on the taxes for which the property sold as well as on subsequent taxes.

"3. I note a provision in the new act for the redemption of real estate by partial payments, please advise whether this applies to property sold to the state in 1932 or other years prior to the new act.

"It is very important that I have a ruling on these questions before October 1, as I have had inquiries from parties desiring to redeem."

In reply to question 1, I advise that Section 271 of the Revenue Act of 1935 provides as follows:

"Section 271. When distinct lots or parcels of land have been included in one assessment and sold for taxes under one decree, any person including the owner, whose interest in one or more of such lots or parcels is such as to entitle him to redeem, may redeem the lots or parcels in which he has such interest, without redeeming all of said property, provided that any owners desiring to redeem any one or more parcels of land must also pay all tax on personal property assessed against him in said assessment, together with all cost of court and advertising fees."

This language is so explicit that it is a clear authorization for partial redemptions. There being no limitation on the time, I assume that it applies

to any property sold to the State and which is still in the possession of the State.

The Section covering question 2 has been amended and I have not been able to secure this amendment as it was passed on the last day. It is my information that the expression used is the prevailing rate rather than six per cent, and presumably means the rate prevailing at the time of the sale. You will, however, not consider the comment as to question 2 as an official opinion.

Answering question 3, I advise that the statute specifically makes the partial payment redemption plan applicable to all property sold to the State prior to January 1, 1935 (Sec. 291).

Please note, however, that this Act is not effective until October, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 17, 1935

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Under Schedule 146 of the 1935 Revenue Act rolling stores are required to pay one State license graduated according to the number of motor vehicles used.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 11, 1935, in which you state:

"I desire your opinion on a question that has already come to my attention several times, and will continue to be put up to me on and after October 1st, viz: Will persons having taken out state and county license for rolling stores in one county be subject to state license in another should they operate in two or more counties, or any other privilege license require state license for each county operated in. I have tried to find the answer to this question in the new revenue bill, but cannot do so. Please let me have your opinion before October 1st."

In reply, I advise that it is provided in part by Schedule 146 that each person, etc. shall pay **to the State** in order to engage in such business the following privilege license. Then follows a license graduated according to the number of motor vehicles used. Following that, there is this provision:

"In addition to the above, there is levied a license for each county in

which said business is conducted of 50% of the amounts levied as a State license."

It seems that the specific declaration that it shall pay to the State the amounts required, and the amounts being on a graduated scale, that the statute contemplates only one State license graduated according to the number of motor vehicles used. This is emphasized, I think, by the specific declaration that there shall be levied a license for each county of 50% of the amounts levied as a State license.

While the statute is not entirely clear, I am of the opinion that this was the intent of the Legislature. Otherwise, it would be difficult to determine the proper license when based on a graduated scale. It might be possible for the same Company to operate a separate vehicle in each county and thus avoid the payment of the graduated license. It is very clear that the Legislature intended that the license should increase in proportion to the number of vehicles operated by the same person and in doing so, had reference to the number of vehicles rather than the particular county in which they were used. I therefore hold that there is only one State license required under said Schedule which license must be graduated according to the number of vehicles used.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935

Hon. W. H. Price, Chairman,
Board of Registrars,
Madison County,
Huntsville, Alabama.

Notice of time and place for registering voters is paid for by State under Section 386, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 9, 1935, in which you request my opinion as follows:

"How do the Registrars collect for publishing notice of time and place of registration of voters?"

I call your attention to Section 386, Code of Alabama, 1923, which is as follows:

"Section 386. Registration books, forms and blanks furnished by the secretary of state. — The secretary of state shall, at the expense of the

state, have prepared and furnished to the registrars and judges of probate in the several counties a sufficient number of registration books and blank forms of oath, certificates of registration, and of notices required to be given by registrars. The cost of the publication of the notices required to be given by the registrars shall be paid by the state, the bills therefor to be rendered to the secretary of state and approved by him."

I do not find where this Section has been amended unless it was amended by the Legislature of 1935, and as these laws have not yet been compiled, I am unable to advise you as to this, but I feel reasonably certain that this particular section has not been repealed or amended. You will see from the above quoted section that the counties do not pay for the notice of time and place of registration, but this is paid for by the State, on the approval of the Secretary of State.

Biennial Report of Attorney General, 1930-1932, page 464.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 18, 1935

Hon. J. M. Gauntt,
Clerk, Circuit Court,
Tallapoosa County,
Dadeville, Alabama.

1. No seizure fee is provided for the seizure of liquor where the amount seized is less than one gallon.
2. Sheriff not entitled to mileage for transporting whiskey except when the same is seized under search warrant.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 14, 1935 in which you request my opinion as follows:

"I will appreciate your advising me at once what the law is covering the following questions:

"1st. What amount of seizure fee is allowed to the Sheriff when less than one gallon of whiskey is captured by the officers?

"2nd. When is the sheriff allowed mileage for transporting whiskey to the jail after the capture of illegal liquors?"

Answering your first inquiry, I call your attention to Section 4654, Code of Alabama 1923, which is as follows:

"4654. Fees to be taxes for arrest and seizures in prohibition cases. -- When an officer arrests any person in possession of an unlawful quantity or quantities of prohibited liquors, or of such liquors under conditions prohibited by law, then on the conviction of such party of a violation of a city ordinance or state law, whether in the recorder's court, or state court possessing jurisdiction, a fee for making the seizure of the liquors shall be taxed up against the defendant, and paid to such officer as a part of the cost of the case as follows: If a seizure is made of not less than one gallon, nor more than five gallons of such liquors, the fee shall be three dollars; if the seizure be of more than five gallons, and less than twenty gallons, the fee shall be five dollars; and if more than twenty gallons, be seized, the fee shall be ten dollars."

You will note this section says, among other things, "If a seizure is made of not less than one gallon, nor more than five gallons of such liquor, the fee shall be three dollars"; Therefore, I find no fee provided for the seizure of liquor in less quantity than one gallon.

Answering your second inquiry, I know of no allowance for mileage for transporting liquors seized except where the liquor is seized under search warrant. Biennial Report 1926-1928, p. 282.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

October 18, 1935

Hon. J. C. Kellett,
Judge of Probate,
DeKalb County,
Fort Payne, Alabama.

Gas Tax — Use of on Federal Aid Relief Projects.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 4, 1935, which is as follows:

"As Federal Aid Relief Projects, DeKalb County has been doing work on county roads and bridges, and in carrying on this work two timekeepers were employed by the Government official who was in charge of the

work here, each of whom was to be paid \$39.00 per month from Federal Funds. The Court of County Commissioners agreed to supplement this pay by the payment of \$20.00 per month to each of the timekeepers in order to pay them what their work was reasonably worth, including use of their automobiles in going to the several places each day while the projects were being carried on.

"I should like to have you advise me whether or not the county may supplement the pay of timekeepers as outlined above, and if so, whether such payment should be made from the gas tax fund or the general funds of the county."

I am of the opinion that your inquiry should be answered in the affirmative.

The position taken by me in this matter, however, is based on the statement set out in your letter to the effect that the employees are performing duties directly incident to or connected with the construction or maintenance of the public roads and bridges of your county.

I refer you to an opinion rendered by this office on July 12, 1933, to the Probate Judge of Coffee County, wherein it was held:

"Gas tax funds may be appropriated to match R. F. C. funds provided that same are used exclusively in strict compliance with the authority authorizing the expenditure of the gas tax fund, viz: for the construction and maintenance of public roads and bridges in the county."

Biennial Report of Attorney General 1932-1934, P. 285.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935

Hon. J. E. Bacon,
Land Appraiser, Housing Division,
Federal Emergency Administration of Public Works,
603 Chamber of Commerce Building,
Birmingham, Alabama.

No privilege tax required to be collected for recording deed wherein United States of America or instrumentality thereof is grantee.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of September 26, 1935, which is as follows:

"The United States Government has entered into binding contracts to purchase the entire Blocks numbered 16, 17, 18, 19, 33 and 34, in the Survey of North Smithfield, situated in the City of Birmingham, Jefferson County, Alabama; and the deal will be closed about October 1, 1935.

"There will be between 92 and 97 separate deeds on the various parcels in these blocks, all conveying title to the United States Government. The Department in Washington has asked me to procure a ruling from you to present to the Judge of Probate at the time of offering these deeds for record in Jefferson County, Alabama, to the effect that these deeds will be exempt from state deed tax.

"You are no doubt familiar with the fact that a similar ruling has already been issued with respect to mortgages executed to the Home Owners' Loan Corporation, in that such mortgages are held to be exempt from state mortgage tax.

"This matter has become urgent due to the fact that the deeds must be delivered and filed about October 1, 1935, to enable the completion of the Birmingham Slum Clearance Project within the time provided by the last executive order."

Under the decision of the Supreme Court of the United States in the case of Federal Land Bank of New Orleans v. Crossland, Judge of Probate, 261 U. S. 374, a deed, such as described in your letter as above quoted, cannot be subjected to a State filing tax.

This office in an opinion rendered April 2, 1934 (Biennial Report of Attorney General, 1932-1934, p. 544) has ruled on a similar question, holding that no privilege tax could be required for recording of mortgage made payable to Home owners' Loan Corporation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 18, 1935

Hon. R. L. Mosley,
Clerk of Circuit Court,
Fayette County,
Fayette, Alabama.

Clerk of Circuit Court — Fees for preparing transcript in criminal appeal cases governed by Sections 6102 and 6108, Code of 1923, and Section 3739, Code of 1923, as amended by Acts 1931, p. 331.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 25, 1935, in which you request my opinion as to the proper fees of the Clerk of the Circuit Court for making transcripts in criminal cases appealed to the Supreme Court and Court of Appeals.

The matter of your inquiry involves as a construction of Sections 6102 and 6106, Code of 1923, and Section 3739, Code of 1923, as amended by Acts 1931, p. 331.

Section 6102, Code of 1923, provides as follows:

"6102. Transcript made by clerks; fees for. — After taking an appeal in the manner herein provided, and filing in the cause a bill of exceptions, or the expiration of the time for filing such bill of exceptions, or if the appellant sooner direct, the clerk, the register, or judge of probate, as the case may be, shall make out a transcript as required by law, and deliver the same to the appellant. He shall in making the transcript make a copy thereof for the appellee and deliver it to him or his attorney, and for the transcript he shall have ten cents for each one hundreds words and for the copy five cents for each hundred words, both of which shall be taxed as costs against the unsuccessful party in the appeal. The appellant shall be entitled to procure a copy of said transcript by paying therefor at the rate of five cents for each one hundred words; provided the appellant make request of the clerk, register, or judge of probate before the preparation of the original transcript."

It will be noted from the above that the clerk is entitled to (1) ten cents for each one hundred words for the original; (2) five cents for each one hundred words for the copy furnished to the appellee or his attorney; and (3) five cents for each one hundred words for the copy furnished to the appellant if seasonably requested. The fee for the copy to the appellant is not taxed as part of the costs but paid directly by him.

Section 6108, Code of 1923, provides as follows:

"6108. Copy of record of appealed cases kept by clerk; fees for. — The clerks of all courts from which an appeal lies to the supreme court or court of appeals, shall be required to make and keep on file in their office an exact copy of the record in all cases certified to said supreme court or court of appeals for use by the parties to such cases. And such clerks shall be permitted to charge, to be taxed as costs of appeals in such cases the sum of two dollars and fifty cents for such copy of the record."

This section gives a fee of \$2.50 for preparing the office copy.

This office has heretofore ruled that these two sections are not in conflict and both have a field of operation. Therefore, the clerk is entitled to the fees set out in both sections. — **Biennial Report of Attorney General, 1932-1934.**
p. 370.

This office has also ruled that a copy should be forwarded to the Attorney General in all criminal cases as he is the attorney for appellee in all such cases. **Biennial Report of Attorney General, 1928-1930, p. 727.** The fee of five cents for each one hundred words for the copy for the appellee, as set out in Section 610, supra, covers this item.

Section 3739, Code of 1923, as amended by Acts 1931, p. 331, provides for a fee of fifteen cents for each one hundred words for making record for the Supreme Court or Court of Appeals. This section is not in conflict with Section 6102, supra, as both have a field of operation. The fifteen cents for each one hundred words provided in Section 3739, as amended, covers the ten cents for each one hundred words for the original and the five cents for each one hundred words for the copy to the appellee (Attorney General in criminal cases) as set out in Section 6102, supra. It will be noted that Section 3739, as amended, does not provide a fee for copies.

What has heretofore been said is applicable to criminal appeal cases notwithstanding the case of **Middleton v. General Water Works & Electric Corporation**, 25 Ala. App. 455, 149 So. 351, cert. den. 149 So. 352. Said case held that the fees of the Clerk of the Circuit Court for preparing transcripts in appeal cases was governed by Section 7278, code of 1923, rather than by Sections 6102 and 6108, Code of 1923, the sections being in conflict. However, this case was a civil case. Section 7278 is the schedule of the clerk's fees in civil cases, the same being set out in the Civil Code. Section 3739, as amended, is the schedule of fees for clerks in criminal cases, the same being set out in the Criminal Code. As above stated, Section 3739, as amended, is not in conflict with Sections 6102 and 6108, supra.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 18, 1935

Hon. Fleetwood Rice,
Judge of Probate,
Tuscaloosa County,
Tuscaloosa, Alabama.

Counties — May pay premium for burglary and robbery insurance for protection of funds of Tax Collector and Probate Office provided said funds are the property of the county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 30, 1935, which is as follows:

"Please advise if Tuscaloosa County is authorized to pay premium on bonds for burglary and robbery insurance for the protection of the funds of Tax Collector and Probate Office.

I am of the opinion that your inquiry should be answered in the affirmative provided the funds in question are the property of the county. This expenditure is authorized by Section 24 of Act No. 622, H. B. 1100, approved July 31, 1931, (Acts 1931, p. 759) which provides as follows:

"Authority of court. — The court has authority * * * 24. To insure insolvent companies the courthouse, jail, machine shops and other buildings of the county against loss by fire and storm, to insure in solvent companies the trucks, tractors, gas shovels, graders, automobiles and other personal property of the county against loss by fire and theft and against liability for damages to person and property. Payments heretofore made for these purposes are validated."

Act No. 622, H. B. 1100, approved July 31, 1931, amended Section 6755 of the Code of 1923, relative to the general authority of courts of county commissioners, boards of revenue or other like county governing bodies.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 18, 1935

Hon. R. G. Redden,
County Attorney,
Lamar County,
Vernon, Alabama.

Health and Sanitation — Expenses of maintenance of drainage canal used in connection with malaria control project may be paid out of County funds.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated September 10, 1935, as follows:

"There is a drainage District in Lamar and Fayette Counties known as the Fayette and Lamar Counties Drainage Districts. There was a canal finished in this district about ten years ago. Since that time the canal has filled up. The War Department wishes to locate a C. C. C. camp on this canal for the purpose of malarial control. They expect to reopen this canal, but request the County Commissioners Court of Lamar County to guarantee the maintenance of this canal after being opened.

"I want to know if an appropriation each year by the County would be a legitimate charge against the County. In other words, can the County appropriate money for the purpose of keeping the canal open and make it a legal charge against the County funds?"

Subsection 20 of Section 6755 of the Code of 1923 provides that the Court of County Commissioners shall have the authority "To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants, when requested so to do by the state board of health."

However, Section 1060 of the Code of 1923 provides:

"1060. Claims of health department of counties "or municipalities to be paid out of budget. — In all counties or municipalities which have provided, or which have aided in providing, a budget out of which the claims, demands and expenses of the health department shall be paid, then such claims and demands of the health department shall not be a claim against the county or municipal treasury, but shall be paid out of the budget or funds, provided the county or municipality has paid into the budget its aliquot or required part of such budget."

If Lamar County has provided or aided in providing a budget out of which the claims, demands or expenses of the Health Department shall be paid as provided by Section 1060, supra, then no appropriation shall be made from the County treasury for the maintenance of the drainage canal in connection with the Malaria Control Project. If, however, no such budget has been provided the reasonable cost of the drainage canal to further malaria control in the County may be paid out of the County Treasury.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 23, 1935

Hon. Watkins M. Vaughan,
Judge of Probate,
Selma, Dallas County, Alabama.

County governing body authorized to dispose of securities in which sinking fund has been invested where the facts show that said securities, since their purchase, have steadily declined and unless steps are taken the county will suffer loss of part of its sinking fund.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of July 29, 1935, which is as follows:

"I desire your opinion on the following statement of facts: A county issues bonds and sells these bonds to another county in Alabama, which the latter county pays out of sinking funds of the latter county. The debtor county fails to pay the interest on said bonds and all are in default. The bonds have greatly shrunk in value on the market and the creditor county desires to get rid of the bonds by selling them to the best possible advantage. Is it lawful for the creditor county to dispose of those bonds at the best price possible, though under their par value and under the price paid, or does the county have to retain them looking for a better price, or even a complete loss?"

Section 2294 (61) Code of Alabama, 1923, provides as follows:

"2294 (61) Sinking funds. — All sinking funds provided for the retirement of bonds shall be invested in bonds of such sub-division, or in bonds of the United States of America, or in bonds of the state of Alabama, or in bonds of any county in the state of Alabama, or any municipal corporation of the state of Alabama, or deposited in bank on interest. All sinking funds created by resolution or ordinance heretofore adopted must be properly set aside each year in accordance with the resolution or ordinance provided for the same, and a report made thereof and filed with the clerk of the municipality or with the probate judge of the county, as the case may be, showing in detail how said sinking fund is invested or deposited. All contracts now in effect for purchasing savings certificates, under the law as it heretofore existed, shall continue as legal investments."

Section 6755 (22) provides as follows:

"22. To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness, and to invest such sinking fund in such interest-bearing securities, or deposit the same on interest-bearing account, within the state, as said court may deem wise."

The answer to your question, to a certain degree, depends upon the facts actually existing in each particular case.

I do not think that the statutes above quoted, intended to prevent the Court of County Commissioners from exercising supervision over the securities purchased as an investment to the extent that they cannot take sufficient steps to save the County from sustaining the loss of funds which have been set aside for the purpose of retiring the outstanding indebtedness of the county.

"The word 'invest' has been judicially defined as follows: 'To surround with or place in, as property in business; to place so that it will be safe and yield a profit. It is commonly understood as giving money for some other property.'" — **Drake v. Crane**, 29 S. W. 990.

"The word 'invest' means to convert into some other form of wealth usually of more or less permanent nature; to employ for some profitable use; to place so that it will be safe and yield a profit; to surround with or place in" — **Papp v. Munger**, 268 Pac. 1100.

"To 'invest' money carries the idea of or laying it out as to produce a return. To invest is not to expend in an unproductive thing." *Davis v. Ballington*, 274 S. W. (2) 555.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 24, 1935.

Hon. W. E. Butler,
Judge of Probate,
Madison County,
Huntsville, Alabama.

Driver's License—

1. Any officer authorized to administer oaths may administer the oath required of an applicant for driver's license.
2. Applicants for a driver's license do not have to appear in person before the Judge of Probate to secure a license.
3. The Judge of Probate must pass upon the qualifications of the applicant.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 11, 1935, as follows:

"I am being repeatedly asked for an official expression as to whether or not an application for a Driver's License may be executed outside of the Probate Office before a Notary Public instead of before the Probate Judge or one of his Clerks.

"To give you an example: A owns and operates a plantation 15 miles from Huntsville upon which plantation there are twenty persons now engaged in making crop who all have occasion to drive a car. A does not feel that he can spare these people time to make this 30 mile trip to get a Driver's License and wants to know if applications taken before a Notary Public in each of these cases can be brought in by one person to the Probate Judge for issuance of all twenty licenses to one man for delivery to the actual drivers.

"My policy up to the present has been that each individual must appear personally in the Office but I really do not want to inconvenience a considerable part of the population of Madison County as would be the case were I ruling too technically on this point.

"Please give me your opinion as to what should be done in cases similar to the one mentioned above."

Answering your question as to whether or not the oath required of applicants for a driver's license may be executed by a Notary Public instead of before a Judge of Probate or one of his Clerks, I wish to say that by opinion of this office, addressed to Hon. W. W. Hill, Judge of Probate of Montgomery County, under date of October 7, 1935, it was held "that the provision that the Probate Judge or any Clerk in said office shall have authority to administer oaths required on said applications and no charge shall be made for said services, does not prevent or forbid the right of any officers authorized to administer oaths to take the affidavit required on such application." Therefore, the affidavits required of applicants for drivers' licenses may be executed before a Notary Public, he being an officer authorized to administer oaths.

Answering your question as to whether applicants for a driver's license have to appear in person before a Judge of Probate, I call your attention to the first sentence of Section 2 of the Act providing for a driver's license, which reads as follows:

"Such person shall apply under oath to the Probate Judge of the County of his residence for said driver's license or a renewal thereof, upon a form to be provided by the State Highway Department."

It will be noted that this does not require the applicant to appear in person before the Probate Judge. Such a requirement does not appear anywhere in the act. Therefore, it is my opinion that applicants do not have to appear in person before the Judge of Probate to secure a driver's license.

However, the facts that the oath of an applicant may be executed before a competent officer other than the Judge of Probate or one of his Clerks, and that the applicant does not have to appear in person before the Judge of Probate in order to secure a license do not relieve the Judge of Probate of his duty of passing upon the qualifications of the applicant as provided in the Act. In the opinion of this office to Hon. W. W. Hill, *supra*, it was held that "This does not relieve the Probate Judge of his duty of passing on the qualifications of the applicant."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

October 25, 1935.

Counties—It is mandatory that counties generally should comply with the provisions of the "County Financial Control Act." Under

said Act counties may issue refunding warrants in payment of outstanding warrants and pay interest thereon.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of October 8, 1935, relative to the construction of Act No. 279, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act." Your letter presents the following inquiries:

1. Is it mandatory for counties to operate under the provisions of said Act?
2. Can refunding warrants be issued in payment of old unpaid outstanding warrants if there are no funds available for their payment at the time of issuance of the refunding warrants?
3. If said refunding warrants are issuable, payable in the future, do same bear interest?

In answer to your first inquiry, I am of the opinion that the provisions of the Act in question are applicable to all counties which do not have a population of 95,000 or more according to the last or any subsequent Federal census, and which do not have Local Acts on the subject applying to single counties.

The Act throughout is very specific in the authority conferred on and the limitations of Courts of County Commissioners, Boards of Revenue or other like county governing bodies in the administration of the financial affairs of the county.

Section 19 of said Act repeals all laws or parts of laws, except local acts applying to single counties, conflicting with any of the provisions of said Act.

Section 21 specifically provides that the provisions of this Act shall not apply to any counties having a population of more than 95,000 according to the last or any subsequent Federal census. This clearly shows a legislative intent that it shall apply to all other counties.

I am of the opinion that your second inquiry should be answered in the affirmative.

Said Act provides for the issuance of warrants for current expenses and for past due obligations. Section 7 of said Act provides that no county shall issue warrants unless cash is available for payment upon presentation to the treasury or depository. This section, in my judgment, applies to current expenses and not to refunding warrants issued for the purpose of paying old outstanding warrants. The issuance of refunding warrants is governed by Section 9 of said Act.

Section 9 of said Act provides as follows:

"Section 9. SHALL REFUND OUTSTANDING WARRANTS. It shall be the duty of all Boards of Revenue, county Commissioners and other like governing bodies of the counties to refund all warrants, which are unpaid and past due at the time this Act goes into effect, and for which there is no money available at that time. Refunding warrants may be sold at not less than par and the money to pay the owners of old warrants or they may be exchanged for old warrants upon any practicable plan such Boards may fix; provided, that refunding warrants may not be issued for amounts greater than the old warrants, plus any interest that may have legally accrued on such old warrants as bear interest themselves. Such refunding warrants may be issued under the law now in force, except that they may be made to mature annually over a period not exceeding twenty years. In the issuance of such refunding warrants care should be exercised to avoid favoritism in the matter of maturities. With the consent of the holders thereof, any county may refund, under the provisions of this Act, temporary loans outstanding when this Act goes into effect made in anticipation of the collection of taxes for the time and under the conditions and terms provided herein for the refunding of outstanding warrants."

In answer to your third inquiry, it is necessary to refer to Section 6784 of Code of 1923, as amended by Acts 1931, p. 612. It will be noted that Section 9, supra, provides that the refunding warrants may not be issued for amounts greater than the old warrants, plus any interest that may have legally accrued on such old warrants, as bear interest themselves. This proviso, in my opinion, applies to the principal amount of the refunding warrants. The interest phase is governed by that part of Section 9 which provides that "such refunding warrants may be issued under the law now in force, except that they may be made to mature annually over a period not exceeding twenty years. We must, therefore, look to the law in force as to the issuance of refunding warrants, which is Section 6784 of the Code of 1923, as amended by Acts 1931, p. 612, which is as follows:

"6784. How long shall run; interest rate, etc. Warrants issued under the provisions of the two preceding sections, 6782 and 6783, may run for a time not exceeding fifteen (15) years and may bear interest at a rate not to exceed six per cent (6%) per annum. Said interest shall be payable annually or semi-annually and may be evidenced by coupons attached to said warrants or otherwise, in the discretion of the court of county commissioners or other governing body of said county."

It will be seen from the above that the refunding warrants may bear interest at a rate not to exceed 6% per annum. It is not mandatory that said refunding warrants bear interest and in this matter Courts of County Commissioners, Boards of Revenue and other like county governing bodies have discretion as to the rate of interest said warrants shall bear subject to the limitation of 6% per annum. The only change made by the County Financial Control Act under consideration, is that said warrants may mature over a period not exceeding twenty years as against the fifteen years as set out in said section as amended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 26, 1935.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Under Sections 436 and 478 of the Code it is the duty of the sheriff to provide space for voting and adequate booths therefor at the expense of the county.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 19, 1935 in which you request my opinion as follows:

"It has been customary in Jefferson County for the County Commission to authorize the placing of two or three District Ballot Boxes in the same building, for which it pays \$5.00 each in rent.

"I would like to know whether or not the Commissioner was authorized by law to pay more than \$5.00, that is rent more than one Ballot box, for each polling place.

"For your information the letter of Examiner Singleton, from which this request results is attached hereto."

I call your attention to Section 436 of the Code of 1923, which is as follows:

"436. Number of ballot boxes, and by whom provided.—The judge of probate, sheriff, and clerk of the Circuit Court of each county in this State shall provide one ballot box, and where it is deemed necessary, shall provide more than one and not more than three, at each place of voting."

And likewise Section 478, which is as follows:

"478. Booths and place for holding election must be provided by sheriff.—The sheriff of each county, **at the expense of the county**, or in case of a municipal election, the mayor or other chief executive officer, at the expense of the municipality shall provide at each polling place in all municipalities of over three thousand inhabitants, a room or covered enclosure, and in such room or covered enclosure shall provide booths or compartments, one booth or compartment for each one hundred or fraction of one hundred over fifty electors registered in the ward or wards in such municipality for that election and shall furnish each booth or compartment with a shelf or table for the convenience of the electors in the preparation of their ballots. Each booth or compartment shall be so arranged that it will be impossible for one elector at a shelf or table in one compartment to see an elector at a shelf or table in another compartment

in the act of marking his ballot. Each voting shelf or table shall be kept supplied with conveniences for marking the ballots. In all other places other than in municipalities of over three thousand inhabitants, no booths or compartments shall be required."

It is my opinion from the foregoing that it is the duty of the Judge of Probate, Sheriff and Clerk to furnish not more than three ballot boxes for each voting place in the county and that the sheriff shall provide a room or covered enclosure for such booths.

It is my judgment that this is authority for the sheriff to provide adequate space to hold the election whether in such building or enclosure there are one or more booths, and that in the absence of fraud, the amount of rent to be paid for such space is to be determined by the sheriff. While the method used by the sheriff of charging the space at so much per box may be artificial, in the last analysis, it amounts to nothing more nor less than paying a lump sum for the building and hence it was a matter within his discretion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 28, 1935.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

The provision following the levying subdivisions of Schedule 93½ providing, "provided however that if an office is maintained in more than one county, the license shall be one-half of the above license payable in each additional county where an office is maintained" held to apply to the entire schedule.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 24, 1935 in which you state:

"There is some confusion as to what license should be issued under Schedule 93½, page 39, of the printed 'License Privilege Tax'. The question that presents itself is, if an Industrial Loan Company takes out a license in the county in which the Home Office is, and pays the license tax of \$100.00, as provided in Section 2 of said act, and desires to take out an additional license in another county than the one in which the main office is situated, should they pay an additional \$100.00 for the branch office, or do they pay, under Section 3 of the Act, one-half of that amount?

Schedule 93½ to which you refer provides:

1. "Each person engaged in this county of buying conditional sales contracts etc. shall pay an annual license as follows:"

Then follows the schedule based on the amount of capital employed.

"The payment of which shall be sufficient to engage in business in any county of the State except county in which principal office is located, in which case county license will be one-half of above schedule."

2. "Each person engaging in business of lending money on salaries or making industrial or personal loans shall pay an annual license of \$100.00 for each county in which they engage in business."

3. "Each person lending money on mortgages secured by real estate in this State shall pay an annual license based on the amount of such loans made during any taxable year as follows:"

All this is followed by this proviso:

"This schedule shall apply to all such persons whether organized under the laws of this State or any other State or territory or county (sic), the payment of the license in each county of the state as evidenced by the license certificate of the Judge of Probate shall be sufficient; provided, however, that if an office is maintained in more than one county, the license shall be one-half of the above license payable in each additional county where an office is maintained."

As I understand it, your inquiry is addressed particularly to subdivision 2 of schedule 93½ as affected by this last quoted proviso.

The statute as written is not at all clear as there seems to be a specific provision in each of the different classifications set out under schedule 93½. However, the proviso does not refer to either of the separate classifications but says, "this schedule," which is all inclusive and unless controlled by the specific language of the particular subdivisions of the schedule, would apply to the entire schedule. Admittedly the proper construction is one of doubt. Where a statute is doubtful or ambiguous, under the rule that a tax statute is to be construed strictly against the State and in favor of the taxpayer, I am persuaded that the last proviso above quoted, which states specifically "this schedule" must apply to the entire schedule and, therefore, modifies the specific provision of the various subdivisions of the schedule. State vs. Fain Service Station 124 So. 119.

I am, therefore, of the opinion that the proper license for an industrial loan company is \$100.00 for the State and \$50.00 for the County in its chief office or place of business, and \$50.00 to the State and \$25.00 to the county in each additional county where an office is maintained.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 29, 1935.

Hon. Eugene B. Henry,
Commissioner of Licenses,
Birmingham, Alabama.

1. Under Schedule 33, wholesale tobacco dealers are liable for one state license of \$100.00 and \$5.00 to each county in which he does business.

2. Under Schedule 44, credit reporting agencies, other than local credit reporting companies, and mutual trade organizations are liable for a state license of \$200.00 on each established place of business and \$50.00 as county license on each such established place of business.

3. The provisions of Schedule 158.1 allowing the purchase of license tags on a monthly declining basis applies only to new automobiles kept for private use.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 21, 1935, which reads as follows:

"Will you kindly give me rulings on the following schedules at your earliest convenience so that I will be able to issue license intelligently on October 1st:

Schedule 33: Revenue Bill. Each wholesale dealer in cigars, cigarettes etc. shall pay one privilege license to the State of One Hundred (\$100.00) and Five (\$5.00) Dollars to each county in which such wholesale dealer does business.

"Should I collect \$150 for cigars & cigarettes or \$105.00?

Schedule 44: Each person inquiring into and reporting upon the Credit and standing of persons, firms or corporations in this state shall pay: To the State for each place of business maintained in this State a license of \$200.00 and shall also pay a license to each county in which such person maintains an office or established place of business of \$50.00.

"Should I collect \$300.00 or \$250.00?

"The reason I am asking questions in regard to above mentioned schedules under general provisions Sec. 350 (b) it reads: There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in or who shall carry on any of the occupations, business, professions etc. for which a license is charged by the State of fifty per cent of the State license or privilege tax except as herein otherwise provided. The point is not clear

in my mind whether or not a person would be liable for the State license plus fifty per cent for the County and then if an office or place of business is maintained in another county the amount would be as mentioned in Schedule.

"Under Chapter 6 Schedule 158.1 there is a provision for issuance of tags on monthly basis for New Automobiles only. Schedule 158.5 deals with trucks and does not set out in this Schedule whether or not same are to be issued on Monthly basis on NEW trucks. The Schedule referring to issuance of tags on monthly basis reads : 'That for new automobiles only' and under Schedule 158 the definition of an automobile is as follows:

"Every motor vehicle as herein defined except motorcycle."

"Should tags on NEW TRUCKS or any other New car other than a PRIVATE car be issued on monthly basis?"

Answering your questions in detail, I advise:

Schedule 33. As quoted by you, this provides one state license of \$100.00 and a county license of \$5.00 in each county in which such wholesaler of tobacco does business.

Subsection b of Section 350 levies a county license of fifty per cent of the state license "except as herein otherwise provided." In my judgment, the specific terms of Schedule 33 govern over this general provision and the proper amount collectible by you is \$105.00.

It might not be amiss to call to your attention that those paying the license levied by Schedule 33 or the license permit required by Schedule 159.16, are expected from the license levied by Schedule 147, known as transient vendor's license.

Schedule 44. The same reasoning applies as to this schedule. The amount payable to the county is specifically provided, and governs the general provision of Section 350 (b). The foregoing applies to the county license.

The provision as to State license is however, different from Schedule 33. In Schedule 33, the requirement was for one State license. In Schedule 44, there is both a state and county license on "each place of business." This Schedule does not change the general rule except it definitely limits the amount payable to the county. In your last question you ask, should tags on new trucks or any new motor vehicle, other than a private car, be issued on a monthly basis? You call my attention to the definition of 'automobile' contained in Schedule 158 and also to Schedule 158.1 in which the provision for issuance of license on a monthly basis is provided.

I call your attention to the other provisions of Schedule 156 containing specific definitions of "Motorcycle," "Jitney Bus", "Motor Truck", "Trailer",

"Small trailer", "Semi-trailer" and "Pole or Pile Dolly". A motor vehicle is defined as "Every vehicle as herein described which is self propelled or which is drawn by a self propelled vehicle." "Automobile" is defined as "Every motor vehicle as herein defined except motorcycles."

While this is a general definition, particular types of motor vehicles are specifically defined and it is my opinion that whenever in chapter 6, a particular kind of motor vehicle is named the reference is to such vehicle as particularly defined by Schedule 158.

Schedule 158.1, as amended, reads as follows:

"SCHEDULE 158.1: 'Private cars': The following license and registration fee shall be charged on automobile and motor cars kept for private use: (a) For each automobile or motor car weighing 2000 pounds or less, Five Dollars (\$5.00). (b) For each automobile or motor car weighing more than 2000 pounds and not exceeding 2500 pounds the license shall be Nine Dollars (\$9.00). (c) For each automobile or motor car weighing in excess of 2500 pounds and not more than 3250 pounds, the license shall be \$13.00. (d) For each automobile or motor car weighing in excess of 3250 pounds, the license shall be Eighteen Dollars (\$18.00). Provided, however, that for new automobiles only these licenses shall be purchased on a monthly declining basis of one-twelfth (1/12) or for each month of the tax year and that the purchaser shall only buy a license for the then remaining months of the tax year. In figuring the license on a one-twelfth (1/12) reduction for each month, the amount of any fraction shall be figured to the nearest ten (10c) cents above the fraction thereof. But in no event shall the price of license tag be less than two dollars (\$2.00). (as) Provided, the word 'Weight' for purpose of computing the license tax payable hereunder, shall be deemed to mean the weight of the vehicle including weight of the bumpers, spare tire, horn, truck and tools, and all equipment customarily or generally used, whether same be installed on the motor vehicle before shipment or delivery by the factory, or before or after delivery by the automobile dealer. (a) For each electric automobile, other than truck, Twelve Dollars (\$12.00). (f) For each automobile propelled by steam, Eighteen Dollars (\$18.00). (g) For each motorcycle, Four Dollars (\$4.00). (h) For each motorcycle with side car attached, Five Dollars (\$5.00). Where the motorcycle is acquired or brought into the State on or after January 1st or is not used prior to January 1st, the license shall be Three Dollars (\$3.00). Where the motorcycle is acquired or brought into the State on or after April 1st, or is not used prior to April 1st, the license shall be Two Dollars and a half (\$2.50). Where the motorcycle is acquired or brought into the State on or after July 1st, or is not used prior to July 1st, the license shall be Two Dollars (\$2.00). (b) Provided, however, that the license tags for such automobile or motorcycle shall remain with such automobile or motorcycle for the remainder of the current tax year, and that before any private automobile or any motorcycle shall be used on any public highway the proper license tax therefor must be procured and securely attached to the rear end of the automobile or motorcycle, said tag to be securely attached right side up with the number thereof in an upright position and the number thereof plainly visible."

It will be noted that this entire Schedule refers to and applies to "automobiles and motor cars kept for Private use." It is so termed, the method of

payment is different and the method of determining the proper tag is different from other sections. It is my judgment that this is a special schedule applying only to automobiles kept for private use, and therefore in the absence of other provisions, the only new motor vehicle for which tags can be purchased on a monthly declining basis are those kept for private use.

Is there any provision applying to other types.

Schedule 158.2 levies a license on Jitney buses. Clearly this is Jitney Bus as defined in 158.

Schedule 158.3 levies a license on automobiles etc. used for hire—based on seating capacity. Manifestly even the basis for license is different from 158.1.

Schedule 158.4 levies licenses on each hearse or ambulance.

Schedule 158.5 states "for each **motor truck** the following license based on the manufacturer's (sic.) rated capacity stamped on the truck shall be charged."

"Motor truck" here means motor truck as defined by Section 158. To illustrate further its complete separateness from 158.1 the license is payable on a different basis, and the amount conditioned (Schedule 158.6 and 158.7) on whether the gasoline used was subject to the Alabama gas tax and also by the nature of the tires used.

In none of these sections applying to special types of motor vehicles is there any provision for taking out license on new vehicles on a monthly graduated basis except Schedule 158.6 which applies in my judgment only to automobiles kept for private use.

We must therefore, look to the general provision to determine the liability for license for motor vehicles for other than private use. This is found in Schedule 158.13, which provides in part as follows:

"158.13 (a) One-half of the license herein provided for shall be paid plus One Dollar (\$1.00) where the motor vehicle is acquired or brought into the State on or after April 1st of any year, or is not used or operated between the period from October first through March thirty-first following the payment of the registration fee or license tax on motor vehicles or trailers shall be evidenced by the delivery to the party paying the same of numbered license tags which shall be placed in a conspicuous place, in an upright position, right side up, on the rear of the automobile, when a semi-trailer truck is operated, one tag on the rear of the semi-trailer."

It is, therefore, my opinion that all types of motor vehicles subject to license except new automobiles kept for private use are required to take out full years license if used or operated between October 1 and through March thirty-first of any fiscal year but if not operated until after March 31, one half the yearly license plus one dollar shall be paid. This applies to all types of motor vehicles except new automobiles kept for private use and motorcycles, for which special provision is made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935.

Hon. Henry S. Long, Pres.,
State Tax Commission,
Capitol.

Attention Mr. W. W. Ramsey:

Where person owning an automobile does not actually operate the same on the public roads, streets and highways of the State, he is not subject to a penalty for delinquency in taking out license unless he actually operates such vehicle prior to the time he secures such license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 24 in which you state:

"I respectfully request your opinion as to date of automatic penalties on automobile license where not operated on highways of Alabama after delinquent date given in Revenue Code.

"For example, if John Doe owns an automobile and does not operate it on the highways of Alabama until December 1st, or later date, at which time he makes application for license tag before operating, should the Probate Judge issuing the license tag collect the penalty in the above case?"

In reply, I beg to advise that there is no liability for license on automobile until the same is actually used on the public highways. Therefore, a person is not delinquent until there is actual use on such public highway. Specifically answering your question, a person would not be subject to a penalty if he secured the license at any time after October 1 and prior to the date he actually operated such vehicle on the public roads, streets or highways. This is a question of fact for the issuing authorities to determine.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 30, 1935

Hon. W. H. Butler,
Judge of Probate,
Madison County,
Huntsville, Ala.

Notice, Publication of—Act No. 370 approved September 7, 1935, construed.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 9, 1935, as follows:

"Please give me your interpretation of how legal advertising originating in the Probate Court of Madison County will be affected by House Bill 506, amending Section 9237, of the Code of Alabama 1923 approved September 7, 1935?"

"In case of newspapers edited in one county, printed in another county and then mailed in the same county in which they are edited, how much of the printing must be done in the County in which it is edited in order to make the advertising legal?"

"What is your opinion as to the meaning of the following: 'Published in the County in which the advertising is published' quoted from the copy of the bill."

The statute requires that the publication of legal advertisements shall be made in newspapers "printed in whole or in part and published in the County in which the advertisement is published * * * ." It does not require that any particular percentage or proportion of the printing shall be done in the county in which the advertisement is published but some part of the printing must be done in such county. As used in the Act, the word 'print' means to do the typesetting, press work, etc., necessary to the publication of the newspaper. See definition of "print" in Webster's New International Dictionary. The meaning of the phrase in the Act "publishing in the county in which the advertisement is published," is made clear when the distinction in meaning between "print" and "publish" is kept clearly in mind. In an explanatory note under the word "publish" in the dictionary cited supra, it is said: " 'Print' and 'publish' are often confused. A book may be printed without being published; it is published only when it is offered for sale or put into general circulation."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 1, 1935

Hon. E. A. Veitch, Deputy Commissioner,
Commissioner of Licenses,
Jefferson County Court House,
Birmingham, Alabama.

Corporations using gasoline pumps for private use, but supplying gasoline to employees at cost, are liable for privilege tax on pumps.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of October 10, 1935, in which you ask:

"I would like to have an opinion in reference to privilege tax on gasoline pumps maintained by large corporations, as in the case of the Woodward Iron Company.

"The Woodward Iron Company has several pumps that they use to refuel their own trucks and cars, and do not operate for profit, they do however, charge gas to some special employees at cost price.

"Please render your opinion immediately as to whether they will have to pay this tax or not."

I wish to call your attention to an opinion by this office on February 27, 1932, to State Tax Commission, in which your question was answered. This opinion was construing Section 20, Acts 1927, p. 139, and held that the filling stations or pumps were not exempt from the payment of the license required by law.—Biennial Report of Attorney General, 1930-32, p. 730.

As Section 20, Acts 1927, p. 139, is similar to Schedule 67 of the 1935 Revenue Law, I am, therefore, of the opinion that the pumps operated by the Woodward Iron Company are not exempt from the payment of the license required by law.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 1, 1935

Hon. L. H. Montgomery,
Judge of Probate,
Eutaw, Alabama.

Under the General Acts of 1933, page 203, the county surveyor is required to make a bond of \$1,000.00, but must pay the premium himself.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 11, 1935, in which you request my opinion as follows:

"In the opinions of the Attorney General 1932-1934 on page 45 the Attorney General rules that the County should pay the bond of the County Surveyor.

"Please advise me which of these governs in the matter of the payment of the premium of the County Surveyors bond."

"In General Acts of the Legislature 1932 Section 15 on page 286 states that the premium on the bond of the County Surveyor must be paid by the person making such bond without expense to the county.

You are correct about the opinion of the Attorney General in 1932-1934 Biennial Report, page 45. This opinion was correct at the time it was written, but since then the law as to county surveyors has been changed by an act approved April 20, 1933 (General Acts 1933, page 203). I call your attention to Section 14 of said Act which is as follows:

"Section 14. The official bonds of Justices of the Peace, Notaries Public and Ex-Officio Justices of the Peace, Notaries Public, Constables and County Surveyors shall be, as to each office, in the sum of \$1,000.00 the premiums on said bonds to be paid by the person making such bond and without expense to the County."

You can see from the above that the county surveyor must make bond in the sum of \$1,000.00 but must pay the premium himself.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 1, 1935

Hon. Theo. Hurt,
Clerk, Circuit Court, Perry County,
Marion, Alabama.

Where a case is dismissed out of court by the presiding judge by quashing the complaint or otherwise, the cost accruing in this case even though the defendant is held to await another prosecution is payable out of the fine and forfeiture fund, under Section 4039, Code of Alabama, 1923, as amended by an Act, approved February 18, 1927, (General Acts, 1927, page 45).

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 15, 1935, in which you request my opinion as follows:

"We have several cases in this Court which were appealed from the County Court of Perry County, charged with 'V. P. L.'"

"The Circuit Judge made the following order: 'The Court ex mero Motu quashes the complaint and defendant ordered held to await another prosecution.'"

"Please advise me if the Clerk and Sheriff's fees in these cases can be collected out of the Fine and Forfeiture Fund?"

It is my opinion, the cost of this prosecution should be paid out of the fine and forfeiture fund, under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927. When the complaint is quashed, this ends the prosecution of the present case as though it was not pressed. In fact such an order in its last analysis is nothing more nor less than a nolle prosequi which ends the case so far as this prosecution is concerned. It is true, the defendant can be reindicted or another warrant sworn out for him but this would be a new prosecution and a new case.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

November 1, 1935

Hon J. L. Potts,
Sheriff of Lauderdale County,
Florence, Alabama.

Sheriffs.—Sheriff authorized to sell contraband articles under Section 4783, Code of Alabama, 1923.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of September 9th, in which you request my opinion as follows:

"We got a small money safe out of the place of business of a party here in this county containing about one gallon of liquor.

"We had a search warrant for this safe and went to search it and he refused to give us the combination, saying the safe did not belong to him and telling us the owner we went to him and he told us he had forgotten the combination. We just brought safe back with us and got combination later. The owner now wants the safe back.

"We want your opinion as to what we should do in this case. Should we confiscate it and sell it according to court order or should we return it to the owner?"

In reply I wish to refer you to Section 4783, Code of 1923, which reads as follows:

"4783. Receptacles of prohibited liquors, handbags, suitcases, trunks, etc., forfeiture and sale of.—All receptacles of prohibited liquors, such as handbags, suitcases or trunks, which have been seized in law enforce-

ment, and which are in the custody of any person or officer, after conviction of parties from whom seized of the violation of the law in respect thereto, shall be sold after notice of sale by advertisement in a newspaper published in the county for ten days in a daily paper, and the proceeds of the sale be paid into the city treasury, if sale is made by a city officer or custodian of such contraband seized by city officers, or to the law enforcement fund in the state treasury, if made by any other officer or custodian."

If all requirements of the law are met, in my judgment, you would be authorized under this Section to sell as contraband the safe you mention that contained "about one gallon of liquor." Of course, you understand sale must be made in accordance with the requirements of the law governing sale of contraband goods or articles.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 12, 1935

Brigadier General John C. Coleman,
The Adjutant General,
Capitol.

License and taxation—Identifying data for exemption of National Guard Officers from motor vehicle license tax (Act 511, approved Sept. 14, 1935), should be provided by the Adjutant General; and for regular Army Personnel should be provided by the Commanding Officers of the posts or stations to which said Personnel are attached.

Fees and costs—Probate Judge not entitled to fifty cents issuance fee on delivery of motor vehicle tag to National Guard Officer or Regular Army Personnel exempt from payment of motor vehicle license tax.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated October 16th, 1935, as follows:

"1. Attention is invited to H. Bill 162, by Representative George P. Quarles, 1935 Session of the Legislature.

"2. Information is requested as to who shall issue the identifying data for the issuance of these tags by the proper county officials, and also if any fee can be charged for the issuance of these tags."

In my opinion the Commanding Officers of the posts or stations of the Regular Army Personnel applying for exemption should provide the identify-

ing data for such personnel; and the Adjutant General, acting for the Governor, should provide the data for all officers of the National Guard.

Section 1 of Act No. 511 (Quarles Act) provides in part:

"Such vehicles shall be properly identified with tags or plates issued by the proper department of the Federal Government or by the commanding officers of the Army or National Guard having jurisdiction in the premises."

In my opinion, the use of the phrase "the commanding officer * * * of the National Guard," in the above quoted excerpt refers to the Commander in Chief.

That part of your inquiry pertaining to the fifty cent fee of the Probate Judge for issuance of a tag to the persons exempt from payment of the motor vehicle license or registration tax, must be answered in the negative.

The law of fees and costs must be strictly construed and an officer may not take a fee for a service rendered unless he can point to specific authority therefor. Schedule 158.20 of Chapter 6, Article XIII of the Revenue Bill of 1935 provides:

"The Probate Judge for issuing the license required by this Chapter of this Article, shall be allowed a fee of fifty cents for issuing each license for operating motor vehicle, which shall be paid to the Probate Judge by the owner at the time of the issuance of the license tag."

The fee is allowed to the Probate Judge for "issuing the license." The persons designated in the Quarles Act are exempt from the license and therefore none is issued by the Probate Judge to them. The Probate Judge is therefore not entitled to the fifty cent issuance fee.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 13, 1935

Hon. Burr Reeves,
Sheriff, Pike County,
Troy, Alabama.

Under Section 6716 of the Code of Alabama, 1923, the sole authority to employ a bailiff to attend Circuit Court is vested in the Presiding Circuit Judge.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of November 1st, as follows:

"Under date of May 14th, 1931, your office rendered an opinion to Hon. Pleasant Nichols that the authority to appoint the bailiffs to serve the Circuit Court was vested in the Sheriff of the County. This opinion also holds that such bailiffs are to be paid \$3.00 per day by the County Treasurer on the certificate of the Circuit Judge, etc. Under date of Sept. 5th 1935, an Act (H-191 Lee) became law and Section 5 provides

that no claim shall be paid by the County Treasurer or Depository except on warrant drawn by the Probate Judge or other officer designated by the Court of County Commissioners or other governing body of the County. The Court of County Commissioners has designated the Probate Judge as the person to draw all warrants on the County Depository of Pike County. Please refer to Sections 6716 and 6717, Code of 1923 and H-191-Lee (Monroe) and advise me as follows:

"(1) Can anyone, other than the Sheriff of Pike County, appoint bailiffs to serve the Circuit Court?

"(2) Can the Circuit Judge, without consulting and getting the approval of the Sheriff, appoint a bailiff or bailiffs to serve the Circuit Court?

"(3) In the event the Circuit Judge does appoint a bailiff or bailiffs to serve the Circuit Court without the approval of the sheriff would such services be a legal charge against the County?

"(4) If such expense is not a legal charge against the County, would the Probate Judge, drawing a warrant for the service of a bailiff not appointed by the Sheriff, be liable on his official bond for drawing such warrant?"

In answer to your inquiry I beg to refer you to Section 6716, Code of Alabama, 1923, which Section provides as follows:

"6716. Bailiffs, constables, or deputies to attend court.—The sheriff of the county must summon one person to serve as bailiff for the grand jury; one to serve as bailiff in every circuit court, or division thereof, in which cases are being tried without juries when directed by the judge; and not exceeding four to serve in every court or division in which cases are being tried by juries, when the judge thereof certified that such bailiff or bailiffs are actually necessary."

Under the provisions of this Section and the decisions of our Courts construing this Section it is my judgment that the authority to employ bailiffs to attend the Circuit Court is vested solely in the presiding circuit judge.

In the case of **Ward, President, Board of Revenue and County Commissioners vs. State ex rel. Goldsmith**, 62 So. p. 660, the Court of Appeals of Alabama, in my judgment, clearly recognizes the sole authority and power of the Circuit Judge to employ the bailiffs mentioned in Section 6716 of the Code.

When the bailiff is appointed as directed in this opinion, it is my judgment that the County may proceed to pay him as provided by law without incurring any liability on official bonds.

There appears an opinion in the Biennial Report of the Attorney General 1930-1932 at page 161, on this subject, and anything in that opinion in

conflict with this opinion is held for naught and is withdrawn. All opinions in this office in conflict with this opinion are hereby withdrawn.

Section 6716, Code of Alabama, 1923; Ward vs. Goldsmith, 82 So. p. 660.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 14, 1935

Hon. Alex Brantley,
Judge of Probate,
Pike County,
Troy, Ala.

Schools—Superintendent entitled to reimbursement for supplies bought which are authorized.

Opinion by Assistant Attorney General Small.

Dear Sir:

The opinion rendered to you on September 5, 1935, is hereby withdrawn and the following opinion is substituted therefor:

"During the audit of the County Superintendent's records, the auditor came across the following items which were paid by the superintendent:

"Compulsory Attendance Forms

Reimbursement for shelves in office for Circulating Library

Forms for Attendance Office

Supplies for Supt. Office

Reimbursement for Labor to School Supervisor

Forms for Transportation

Printed Cards for Attendance Officer

Office Supplies for School Supervisor

"I am wondering if the Superintendent should be reimubrsed for such items, payable from the General Fund.

"Will thank you very much for your opinion on the matter, and trusting that I may hear from you at an early date I am"

Section 169, Alabama School Code, 1927 provides as follows:

"Assistants to County Superintendent, Office, etc. — The County Board of Education may in its discretion **provide** upon the nomination of the County Superintendent of Education, at least the following assistant: **an elementary School Supervisor** and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of administration and supervision as required of County Superintendents of Education. The County Board of Education may employ additional clerical and professional assistants, including health supervisors, and many reimburse them for all actual traveling expenses necessary in the performance of their official duties. The County Superintendent is hereby required to maintain an office at the County seat. The County Board of Revenue or Court of County Commissioners shall provide the County Superintendent of Education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The County Board of Revenue or Court of County Commissioners shall also provide necessary **furniture, office equipment**, stationary, postage, forms and **supplies** required by the County Superintendent of Education and his assistants."

This section requires the Commissioners Court or Board of Revenue to furnish the County Superintendent of Education and his assistants with office quarters, furniture, office equipment, stationery, postage, forms and **supplies** which may be required by said superintendent or his assistants.

This same section authorizes the employment of a school supervisor as an assistant to the County Superintendent of Education.

SECTION

It must be noted, however, that this ~~section~~ specifies that, "The County Board of Revenue or Court of County Commissioners shall **provide** - - - ." In my judgment, this language is limiting in the sense that all purchases shall be approved by the County Governing Body and paid for only upon their approval.

If, therefore, the purchases and expenditures made by the County Superintendent of Education have the approval of the County Governing Body, then it becomes the duty of the County Governing Body to reimburse the County Superintendent for those expenditures so approved.

Subject to this limitation, in my judgment, the Superintendent of Education should be reimbursed for the following items:

Supplies for Superintendent's office.

Reimbursement for Labor to School Supervisor.

Office Supplies for School Supervisor.

Sections 396 and 397 of the Alabama School Code, 1927, provide for circulating libraries and the book cases which are necessary equipment for the maintenance of such libraries.

Section 189, in conjunction with the above quoted sections, and subject to the approval of the county governing body, authorizes the reimbursement of the County Superintendent for expenses incurred in providing shelves in his office for a circulating library.

With reference to payment for compulsory attendance forms, forms for attendance officer, forms for transportation and printed cards for attendance officer, it is my opinion that the Superintendent of Education may be reimbursed by the County Board of Revenue or Court of County Commissioners. I refer you to Section 169 School Code of 1927, which provides in part as follows:

"The County Board of Revenue or Court of County Commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies required by the County Superintendent of Education and his assistants."

In my judgment, the word "**forms**" as used in this statute is broad enough to include all of those forms required by the Superintendent of Education, with approval of the County Board of Revenue or Court of County Commissioners.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 14, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol. •

1. Under Act 547, approved September 14, 1935, amending the so-called Contract Carrier's Act of 1932, only motor vehicles used exclusively for the transportation of school children etc. from school are exempt from license tax.

2. License tags are supplied by the State Comptroller and are payable by the State out of the General Fund based on the actual cost of the tags.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 1st, in which you request my opinion as follows:

"House Bill No. 948 (Steele) approved September 14, 1935, amends an Act of the Legislature of Alabama approved October 28, 1932, and provides that:

"The State of Alabama shall provide at State expense a special license tag to be used on and to designate all motor vehicles used exclusively for the transportation of school children and school teachers to and from school, etc.," "These tags shall be supplied annually upon requisition to the State Comptroller by the State Superintendent of Education, etc., etc."

"Does this law apply to motor vehicles not owned by the State or County, viz: Those owned by private individuals who contract for transporting school children and school teachers? (Contracts with individuals do not provide the exclusive use of the vehicle for such transportation.)

"The law designates no fund nor makes an appropriation for this expense and I presume this to be an expense against the Educational Trust Fund.

"Is this the proper interpretation?"

The Act to which you refer states in part:

The State of Alabama shall provide at State expense, a special license tag, etc."

then follows the method of securing and distributing such tags.

It is my opinion that the expression "The State shall furnish at State expense," contemplates the payment by the State out of the General Fund the cost of these tags.

In *Weaver vs. Tidwell*, 153 So. 218, the Supreme Court held that a similar expression applying to the County contemplated the payment out of the County General Fund.

In the absence of a specific appropriation to pay for these tags, I presume the same would be paid out of the emergency appropriation, but the cost should be limited to the actual cost of the tags.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 16, 1935

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Counties—Section 9 and 10 of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act,"

which provides for the issuance of refunding warrants, is applicable to valid outstanding claims whether same are in form of warrants or not. Refunding warrants may contain a proviso that same may be called before maturity. Budget may contain a miscellaneous or emergency appropriation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 28, 1935, in which you present the following inquiry relative to the construction of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act":

"(1) Clarke County has outstanding some valid obligations against the general fund which have not been put in the form of warrants. There are not sufficient funds available to provide for immediate payment of these obligations. Section 7 of the Act prohibits issuance of a warrant to cover these obligations. Section 9 of the Act, as well as existing general laws on the subject, making provision for the refunding of outstanding obligations, apply only to outstanding warrants. How can these obligations be validly taken care of?

"(2). In issuing the refunding warrants contemplated by the Act the warrants issued will doubtless be made to mature serially over a period of years. The amounts of the maturities must necessarily be made small enough each year to insure their incorporation into the budget for that year. If we should incorporate in these refunding warrants a provision that they may be called and paid at par at any time prior to maturity, would such a provision be valid? That is, could the county then compel the holder of such a warrant to accept his money and stop the payment of interest prior to maturity? And would such a disbursement be a valid disbursement for any year prior to the year fixed for the maturity and payment of such warrant.

"(3) It is quite probable that at the beginning of the operation of this Act, there will be errors of judgment in the adoption of the budget; however careful we may be, we may overlook or underestimate some essential items in the budget. Will it be permissible as a safeguard against such error to make an appropriation 'for miscellaneous purposes' and to make transfers from time to time during the fiscal year from this miscellaneous appropriation to such items of the budget as may have been under-estimated or overlooked? For illustration, suppose we appropriate \$5,000.00 for Circuit Court expense, and we find near the end of the fiscal year that our Court appropriation is exhausted; if we have funds available in a miscellaneous fund, could we not pay the excess Court expense out of the miscellaneous fund?"

In answer to your first inquiry, I am of the opinion that valid outstanding obligations of a county due and unpaid on October 1, 1935, which had not been put in the form of warrants may be refunded under the provisions of Sections 9 and 10 of the County Financial Control Act.

Sections 9 and 10 of the Act in question only specifically provide for the refunding of outstanding warrants or certificates of indebtedness unpaid and past due at the time the Act goes into effect, viz., October 1, 1935.

The title of the Act contains the following proviso: "to provide for the registration of all outstanding general obligations." Section 2 of the Act in defining the purpose of the Act concludes as follows: "And to authorize the refunding of outstanding general obligations, other than bonded indebtedness, so that the provisions of this Act may be put into effective operation." This general proviso shows a clear legislative intent to refund all outstanding obligations of the county, other than the bonded indebtedness. The purpose of the Act unquestionably is to this effect.

The question then presents itself as to whether or not the general purpose and spirit of the Act and the clear intention of the Legislature can be supplied and read into Sections 9 and 10 of said Act.

The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, though it may be consistent with the strict letter of the law.—**J. H. Davis & Co., v. Thomas**, 154 Ala., 279, 45 So. 897. A thing within the intention of the enactment of a statute is as much within the statute as if it were within the letter thereof.—**City of Birmingham v. Southern Express Company**, 164 Ala. 529, 51 So. 159. And the Court in construing a statute must look to the context, the spirit, and the whole, to reach the true intent of the Legislature.—**State ex rel. Ellis v. Griggs**, 287 Ala. 601, 151 So. 850; **Nunas v. Harden**, 226 Ala. 361, 147 So. 166, and cases cited. Moreover, the recitals of the title of an Act are available aids to the removal of ambiguity in the enacting clauses.—**Wages v. State**, 225 Ala. 2, 141 So. 707.

Applying the above rules of statutory construction to the instant question, it is my opinion that the general purpose and spirit of the Act and the clear intention of the Legislature may be supplied and read into Sections 9 and 10 thereof. It, therefore, follows that the refunding is not limited to those claims that have been put into the form of warrants or certificates of indebtedness, but include all valid outstanding obligations, other than the bonded indebtedness, that were unpaid and past due on October 1, 1935.

In answer to your second inquiry, I am of the opinion that the refunding warrants may contain a proviso that same may be called at any time before maturity. The matter of interest and the maturity of the refunding warrants is a matter within the discretion of the county governing bodies, subject to constitutional and statutory limitations.—**Opinion of Attorney General to Judge of Probate of Clarke County** on October 25, 1935. I know of no constitutional or statutory limitation that would prevent the county governing body from incorporating into the refunding warrants a proviso in the nature of the one in question unless the obligation of contract be violated in a particular case. In other words, I do not think that the holder of an outstanding warrant or obligation need accept a refunding warrant to his prejudice in the matter of interest or maturity.—**Rhodes v. Marengo County Bank**, 205 Ala. 667, 38 So. 850.

In answer to your third inquiry, I am of the opinion that a "miscellaneous or emergency appropriation" may be included in the annual county budget

made up in compliance with Section 3 of the Act in question. It would be absolutely impossible to determine in advance the exact amount of any particular class of expenditures. Section 3, supra, only requires a budget on estimated amounts of expenditures. In my opinion a "miscellaneous or emergency appropriation" would not only be legal but almost necessary.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 18, 1935

Hon. Chas. W. Lee,
State Comptroller,
Montgomery, Alabama.

Tax Collectors—

1. A tax collector has no authority to collect taxes after the date of expiration of the term for which he was elected.

2. The amount of insolvent or litigated taxes charged to a tax collector when he retires from office before the expiration of the time allowed to make such collections must be charged to his successor in office, for the purpose of collecting the same.

3. The successor in office is charged with the duty of collecting, reporting, and paying the same, and making final report of uncollected balance in all respects as if no change in office had been made and he is entitled to the commissions authorized by law for the collection of same.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of September 9, 1935, which is as follows:

"The Acts of 1932 state that the Tax Collectors have until December 10, 1935, to make final settlement for taxes collected.

"In a case where a Tax Collector is going out of office on October 1, 1935, and does not make final settlement before going out of office, has he any authority to collect taxes after October 1, 1935?

"If the Tax Collector that is going out of office on October 1, 1935, hasn't authority to collect taxes after October 1, 1935, should not the amount of uncollected taxes be charged to his successor in office?

"Is the Tax Collector that goes out of office on October 1, 1935, entitled to any commissions on the amount of uncollected taxes as of

October 1, 1935, that are collected after said date by successor in office?"

I call your attention to the fact that Section 202, Article 6 of the Revenue Act of 1935, approved July 10, 1935 and effective October 1, 1935, contains the provision that tax collectors have until December 10, 1935 to make final settlement for taxes collected which provision was originally contained in Act No. 17 of the General Acts 1933 at page 9.

In my opinion, the first inquiry in your letter should be answered in the negative. In such a case, the term of office of the tax collector expired on October 1, 1935, after which date he had no authority whatever to collect taxes or to perform any other duties which the tax collector is authorized by law to perform. His official bond expired with his term of office, and after that time, he had no more authority to collect taxes than any other private citizen. The fact that the tax collector by act of the Legislature referred to above, was given until December 10, 1935 to make final settlement with the State for taxes collected, gave him no authority whatever to make collection of taxes after the date of expiration of his term of office, to-wit: October 1, 1935. The "taxes collected," referred to in the Act, supra, means taxes collected prior to October 1, 1935, during his term of office, and while he had the authority to collect the same, and while he was under bond so to do. That the Legislature recognized the fact that the tax collector had no authority to collect taxes after his term of office expired seems clear to me from the provision made in Section 185, Article 6, of the Revenue Act of 1935, that "his successor in office must be charged with the several accounts so credited to the retiring collector, and is charged with the duty of collecting, reporting and paying the same, and making the final report of uncollected balance in all respects as if no change in office has been made." Therefore, it is my opinion that a tax collector whose term of office expires on October 1, 1935 has no authority to collect taxes after that date.

Your second inquiry must be answered in the affirmative. In answer to this question I refer you to Section 185, Article 6, of the Revenue Act of 1935, quoted in part above, which reads:

"If the collector, while charged with the collection of insolvent taxes and taxes in litigation, shall retire from office before the expiration of the time allowed to make such collection, he shall make, to the next term of the court thereafter, the report required by the preceding section; whereupon allowance must be made and certified and credits entered as provided in said section; but his successor in office must be charged with the several accounts so credited to the retiring collector, and is charged with the duty of collecting, reporting and paying the same, and making final report of uncollected balance in all respects as if no change in office has been made."

Therefore, the amount of uncollected taxes charged against a collector at the time of the expiration of his term, October 1, 1935, must be charged to his successor in office, for the purpose of collecting the same.

Your third inquiry must also be answered in the negative. From Section 185 of the Revenue Act, supra, quoted in my answer to your second in-

quiry, it will be seen that the successor in office "is charged with the duty of collecting, reporting and paying the same, and making final report of uncollected balance in all respects as if no change in office has been made."

Section 183, Article 6, of the Revenue Act of 1935, provides:

"It is the duty of the collector to proceed with all diligence to collect such insolvent taxes and to make monthly reports, payments and settlements thereof, with the State Comptroller and county treasurer, as he is authorized and required to do so in the collection of taxes which have not been declared insolvent; and he is entitled to the same commissions upon such insolvent taxes collected by him as are allowed by law upon the same character of taxes which have not been declared insolvent."

Since the successor in office makes the collections referred to in your inquiry, it is my opinion that he is entitled to the commissions on the same which are provided for in Section 183, *supra*. Therefore, it necessarily follows that the tax collector whose term of office expired on October 1, 1935, is not entitled to any commissions on the same.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 18, 1935

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Probate Judges are allowed to collect \$1.75 for issuing marriage licenses. The \$2.00 provided for under Section 9005 has nothing to do with the issuance of the license but is a fee for celebrating the rites.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 16, 1935, in which you request my opinion as follows:

"I would like to have your opinion upon the legal and proper amounts that may be charged in issuing marriage license and also for celebrating rites of matrimony. You will notice in this connection that under Section No. 7285 the sum of \$1.50 is allowed for issuing and recording marriage license and the sum of \$1.50 is allowed for celebrating the rites of matrimony, and under Section 9005 of the Code of 1923, the sum of \$2.00 is allowed for celebrating rites of matrimony, and under Section 1153

of the Code of 1923 the Probate Judge is allowed a fee of 25c for each marriage reported, this fee to be paid by the person obtaining the marriage license and this Section further provides that in no case shall a license fee exceed \$2.00.

"Therefore, will you please advise me what is the proper maximum legal charge that may be charged for issuing and recording a marriage license, including the fee of 25c for making reports of the same and also what is the maximum legal charge for celebrating the rites of matrimony?"

You are correct. Section 7285, Code of Alabama 1923 says, among other things:

"Issuing and recording marriage license, together with consent to the marriage and certificate of celebration and taking and recording bond . . . \$1.50."

The above paragraph is in full payment for the things which it contains, issuing license, recording the same, together with consent of marriage and certificate of celebration and recording bond.

Section 9005, Code of Alabama 1923, simply fixes the fee for celebrating the rites of matrimony, which is \$2.00 and is as follows:

"Section 9005. Any judge, justice of the peace, or licensed minister of the Gospel celebrating the rites of matrimony, is entitled to \$2.00."

Under Section 1153 of the Code of Alabama 1923 the Probate Judge is allowed to charge 25c to be paid by each person obtaining a marriage license as a fee for transmitting report to the Board of Health, Montgomery, Alabama and is as follows:

"1153. Record of marriages furnished board by probate judge.—Within the first five days of each calendar month the judge of probate of each county in this state shall forward to the state board of health at Montgomery, on blank forms to be supplied by said board, reports of all marriages that have occurred in the county for the preceding month. For this service the judge of probate shall be entitled to a fee of twenty-five cents for each marriage reported, such fee to be paid by the person obtaining the marriage license. In no case shall a license fee in any county including the fee of twenty-five cents, exceed two dollars."

Therefore when the Judge of Probate has an application for a marriage license, he is allowed to collect \$1.50, the amount set out in Section 7235, *supra*, then he may collect twenty-five cents under Section 1153, *supra*. This makes a total of \$1.75 for issuing the license.

Now the fee under Section 9005, *supra*, has nothing to do with the issuing of the license, as the parties contracting may or may not have the rites celebrated by the Judge of Probate or as we say in common parlance, have him perform the ceremony, but when he is called on to perform in this ca-

capacity for this specific service, he must collect a fee of \$2.00, which is altogether different and has no connection with the issuance of the license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1935

Hon. W. C. Register,
Sheriff, Geneva County,
Geneva, Alabama.

Telephones—Section 6755, subsection 16, as amended, designates what county officers must be furnished with telephones. An Act of the Legislature approved April 19, 1933 (General Acts 1933, p. 201) makes it discretionary with the courts of county commissioners, boards of revenue or other courts of like jurisdiction, as to the furnishing of other offices with telephones not designated by Section 6755, *supra*. All telephones so installed should be used for official business and when so used are to be paid for by the county out of the general fund.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I have your letter of recent date in which you state:

"Section 6755, subsection 16 give the Commissioners right to establish phones in the offices of Circuit Judge, Circuit Clerk, Sheriff, Jail, Tax Collector and Tax Assessor, and Probate Judge.

"Section 1, Acts 1933, No. 137, page 201, reads as follows:

" "The Boards of Revenue or Courts of County Commissioners may designate which offices in the court house may have telephones installed therein.

" 'Section 2. That all laws and parts of laws in conflict herewith be and the same are repealed.'

"Does this mean that the law in Section 6755 is repealed in toto and that Boards of Revenue or Boards or Courts of County Commissioners have the sole power to say where each telephone shall be placed in the various offices?

"Does this mean that the Board of Revenue or Board, or Court of County Commissioners can say that a telephone must be placed in the Probate Office, or Circuit Clerk's office, or Sheriff's office, or Tax Col-

lector's office and that one and only one telephone shall be installed in the Court House?

"If the Board of Revenue or Board of County Commissioners are required, under the law to furnish telephones in one or more of the offices in the court house, should the County pay for calls of the Circuit Judge, Circuit Clerk, Sheriff, Tax Collector and Tax Assessor, Register in Chancery, or either of them when such call is strictly in connection with the business of the courts, or officer, acting as an official? Should the County be required to pay the monthly rent on a telephone, used by such official when the telephone is used daily by such official to order groceries, talk to his friends and acquaintances in general on the general topics and happenings in the community. In other words, should the County ever, under any conditions be charged for the personal calls of the official, or anyone else?

"Shouldn't the County pay for a telephone at County Jail."

In answering your request, I call your attention to Section 6755, Code of Alabama, 1923, subsection 16 as amended by Act 1931, p. 759, which is as follows:

"16. To procure and provide telephones for the offices of the circuit judge, the clerk and register of the circuit court, the offices of the sheriff and jailer, tax assessor and tax collector, and the judge of probate in their respective counties, and to pay for the same out of the general funds of the county; and said court of county commissioners or board of revenue, or like body may, in like manner and for the same officer, establish telephones in both courthouses where the said officers maintain two offices in the county; and must install such telephone upon the request of the officer entitled thereto."

I also refer you to an Act of the Legislature approved April 19, 1933 (General Acts 1933, p. 201), which is as follows:

"Section 1. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: That Boards of Revenue or Courts of County Commissioners may designate which offices in the Court House may have telephones installed therein."

I do not think the above Act repeals or even modifies Section 6755, *supra*. This section specifically designated just what county offices shall be supplied with telephones. The Act quoted above enlarges the power of the commissioners courts, boards of revenue or courts of like jurisdiction and leaves to their discretion the placing of telephones in offices other than those designated by Section 6755, *supra*. In other words, offices named in said section must be supplied with telephones, while, under the Act, *supra*, others may be so supplied at the discretion of the Commissioners Court. All telephones installed in accordance with either the statute quoted above or the Act set out above, are to be used for official business and when so used are to be paid for by the county out of the general funds.

This office had held in numerous opinions that the county should pay for the long distance calls made by a sheriff on official business.

Biennial Report Attorney General, 1926-1928, p. 127.

Biennial Report Attorney General, 1928-1930, p. 370;

Biennial Report Attorney General, 1930-1932, p. 515;

There should be no objection to an officer using his official telephone for his personal calls, provided such use does not place any additional charge on the county, or interfere with his official calls.

There is no law authorizing the county to pay for the telephone in the county jail.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1935

Hon. John D. Wright,
County Treasurer,
Conecuh County,
Evergreen, Alabama.

Counties—The holder of outstanding warrants need not accept refunding warrants in lieu thereof if his rights are prejudiced thereby, said refunding warrants being issued under the provisions of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act."

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of recent date which is as follows:

"I am County Treasurer of Conecuh County.

"Under a recent Act of the Legislature known as the 'Lee Budget Bill' all Counties are required to call in and refund all outstanding warrants issued and unpaid prior to October 1st, 1935.

"One of our County officials holds several salary warrants and is taking the position that the Legislature is without authority to require him to refund his warrants; that they are duly registered in the office of the County Treasurer and that they should be paid in their order out of any available funds for salaries.

"I will appreciate if you will therefore give me a ruling on this question at your earliest opportunity."

In answer to your inquiry, I am of the opinion that the holder of the warrants in question need not accept refunding warrants in lieu thereof if his rights would be prejudiced thereby.—**Rhodes v. Marengo County Bank**, 205 Ala. 667, 88 So. 850. This presents a question of fact involving the financial condition of the county, the status of the warrants in question in the matter of preferences, and the items included in the budget for the present fiscal year.

I know of no better way to inform you in regard to the matter under consideration than to refer you to the case of **Rhodes v. Marengo County Bank, surpa.** As application of the principles therein set out to any particular state of facts should give you the information you desire.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 20, 1935

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

In counties having 75,000 population or less clerk of Jury Board shall work under direction of the Jury Board and shall be paid for his services only when actually engaged in performing his duties. The Jury Board has authority to direct the work and prescribe the time which the clerk is to spend in performing his duties.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of November 5, 1935 in which you state:

"Kindly refer to House Bill No. 70, Page 55, Acts of 1931 and Amendment thereto, House Bill No. 247, Page 136, Acts of 1933, and advise as to the following:

"Act of 1931 provides for the employment of a clerk of the Jury Board. The Act of 1933 amends the Act of 1931 in so far as salary of the members of the Jury Board are concerned, limiting same to not more than \$100.00 each per year which at \$5.00 per day is a maximum number of twenty working days. Please advise if these Acts construed together places any limitation as to time on the clerk."

I have carefully examined Act No. 47, H. B. 70 approved February 20, 1931 (Acts 1931 p. 55) and Act No. 146, H. B. 247, approved April 19, 1933 (Acts 1933, p. 136), and it is my opinion that the limitations placed on the Clerk of the Jury Board are that he shall work under the direction of the Jury Board and shall be paid only when actually engaged in performing his duties. The statute requires the clerk to work under the direction of the Jury Board. The phrase "under the direction of the Jury Board" is an expression in general terms giving the Jury Board the right to supervise and control the work of the clerk and includes the right to limit the clerk as to the time spent in performing his duties.

The compensation of the clerk is governed entirely by Section 8 of Act No. 47, H. B. 70, approved February 20, 1931, (Acts 1931, p. 55), which is as follows:

"Section 8. In counties having seventy-five thousand population or less by the last federal census preceding the employment, the clerk of the Circuit Court may be employed as the clerk of the Jury Board and in such counties the clerk of the Jury Board whether he be the clerk of the court or not, shall be paid for his services rendered under the direction of the Jury Board the sum of Five Dollars (\$5.00) per day while actually engaged in performing his duties, to be paid out of the county treasury upon the order of the President of the Jury Board. In counties having more than seventy-five thousand and less than two hundred thousand population according to the last or any subsequent federal census, the Board shall employ a clerk who shall hold no other office during the term of his employment and who shall be paid for his services rendered under the direction of the Jury Board, the sum of Five Dollars (\$5.00) per day while actually engaged in performing his duties, to be paid out of the county treasury upon the order of the President of the Jury Board. In counties having more than two hundred thousand population according to the last or any subsequent federal census, the Jury Board in any such county shall have authority to employ such clerical assistance as such Board deems necessary and proper, and may expend for such clerical assistance in compensation and in paying their reasonable and necessary expenses in performing the duties of their employment a sum not to exceed Four Hundred and Fifty Dollars (\$450.00) per month to be paid out of the county treasury upon the order of the President of the Jury Boards."

Section 8, supra, is in no way affected by Section 5 of said Act, as amended by Act No. 146, H. B. 247, approved April 19, 1933 (Acts 1933, p. 136) which fixed the maximum compensation of the Jury Board.

Biennial Report of Attorney General, 1930-1932, pp. 236, 639 and 1055;
Biennial Report of Attorney General, 1932-1934, p. 31.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

November 22, 1935

Hon. Henry S. Long, President.
State Tax Commission,
Capitol.

License Inspectors held entitled to penalty of 15% of license payable to the Probate Judges in cases of delinquency.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date in which you state:

"Section 353 page 376 of House Bill 324 provided for the appointment and compensation of License Inspectors.

"Sub-section C, of said Section 353, provides for the imposition of a penalty of fifteen (15%) per cent, together with interest from date of delinquency.

"Sub-section E, of Section 353, provides that 'the Probate Judge shall file report to the Comptroller and Tax Commission showing the amount of such penalties collected, from whom, and for what, the amounts paid to the License Inspector and the amount remitted, * * * '.

"Sub-section F, of Section 353, provides that the License Inspector in criminal prosecutions will be paid fifteen (15%) per cent of the fine of penalty thereafter imposed.

"Section 359 of the Compilation of the Revenue Laws of Alabama 1929, specifically provides that the License Inspector shall be entitled to the penalties imposed on delinquents for performing the duties required by this Section.

"House Bill 324, Section 353, referred to in first above paragraph, provides for the payment of the penalty to the License Inspector only by implication. House Bill 324 does not repeal the provision under Section 72 of the Acts of 1927, p. 139 where it is not in conflict with the provisions thereof.

"In order to avoid any misinterpretation by the Probate Judges of the State in making settlements with the License Inspectors, I request your formal opinion as to whether or not the License Inspector under the provisions of the new Revenue Bill (H. B. 324), will be entitled to the penalties imposed on delinquents."

I have carefully considered Section 353 in its entirety and in the light of the previous history of the law with reference to the penalties which have heretofore been payable to the License Inspector. I will briefly recapitulate. Under the act of 1919 the penalty of 15% of the amount of license was pay-

able to the License Inspector in all cases in which he had reported the delinquency to the Probate Judge. The Act of 1923 relating particularly to motor vehicles, but which was held in the case of *Stewart v. Gilliland*, 219 Ala. 32; 121 So. 35, to imply a repeal of the 1919 Act, provided that the License Inspector should cite the delinquent to appear before him and if the license was found to be due, then to report such delinquency to the Probate Judge. This was held as necessary precedent before payment of the penalty could be made. The 1927 Act, which was passed prior to the *Gilliland* case followed closely the language of the 1923 Act, and presumable was subject to the same construction. In 1931 the Act was amended which amendment applied only to Jefferson County, which in effect carried it back to the original 1919 Act and made the payment of penalties due upon the report of delinquency to the Probate Judge. See *Henry v. Tutwiler Hotel Operating Co.* 162 So. 365.

Throughout the history of the Act, the penalty of 15% was for the benefit of License Inspector as well as a penalty to force the taxpayer to take out the license. The effect, however, was in some cases that persons who were actually cited and reported were subject to the penalty and those not cited and reported were not subject to the penalty. The payment of the penalty therefore, was precedent upon the delinquency coming to the notice of the License Inspector rather than for the delinquency itself.

The Legislature of 1935 clearly attempted to remove this inequality by making the payment of the penalty automatic in all cases of delinquency and making it unlawful for the Probate Judge to collect a license without the penalty. It is therefore apparent that the penalty is payable in all cases of delinquency.

From an examination of the Act of 1927, which was the last Act of statewide application prior to the 1935 Act, it will be found that the duties of the License Inspector under both Acts are closely parallel and almost dovetail. Under both statutes, he is required to examine the stubs of the Probate Judge and from such other information that he can avail himself to determine what persons are delinquent in the payment of privilege or motor vehicles licenses and cite them to appear before the Probate Judge to take out the license, to report the delinquency to the Probate Judge and ultimately, if such methods are unavailable, to institute criminal proceedings. In fact, both statutes say that criminal proceedings may be instituted in the first instance in case of emergency.

In neither Act is there any provision for the payment to the License Inspector of any other salary or compensation than out of the penalties accruing from delinquent licenses. Under the 1927, the 1923 and the 1919 and the 1931 Acts cited above, it was plainly provided that the 15% penalty should be paid to the License Inspector. It was likewise provided that where criminal proceedings were begun, that 15% of the fine or penalty imposed should be paid to the License Inspector. The latter provision appears in the 1935 Act, the former does not, except by implication. That there is such implication I think is to be found in the following provisions:

"Subsection (e). The Probate Judge in remitting such penalties shall file report with the Comptroller and with the State Tax Commission showing the amount of such penalties collected, from whom and for

what, the amounts paid to the License Inspector and the amount remitted provided that in counties where the License Inspector is payable on a salary basis, all fees and penalties shall be paid into the State Treasury."

There is no provision for paying the fees and penalties into the State Treasury except in counties where the License Inspector is payable on a salary basis, which provision is to be found in Sub-section (i) of Section 353.

Subsection (i) provides:

"In counties of over two hundred thousand population the State Tax Commission shall fix the compensation of License Inspectors and shall at the time of appointment and annually thereafter fix the compensation and allowance of expenses of the License Inspector for such county. **All commissions and fees which would be payable to the License Inspector** shall be paid by the Probate Judge, the Commissioner of Licenses, into the State Treasury."

It seems reasonably clear that the Legislature did not intend for the fees and penalties to be paid into the State Treasury except in counties of over two hundred thousand inhabitants. Neither did it provide for the payment of such fees and penalties into the County Treasury.

The License Inspector, as pointed out, has been an officer throughout the history of the law whose entire compensation has been paid out of fees and penalties and whose duties under the new Act are substantially the same as those provided by the old Act. Practically the same penalties and fees are provided and, with the exception that the penalty is payable upon delinquency, the administration and enforcement is the same. The late John Mooring often used the expression that "The License Inspector is the hub upon which the enforcement of the license laws turn." This has been recognized generally and was clearly recognized by the Legislature in so carefully providing his duties. In fact, the 1933 Act with particular reference to motor vehicles adds provisions, the purpose of which are to better enable the License Inspector to prevent fraud, although it imposes an additional duty on him thereby.

From reading the statute as a whole, and particularly the two provisions which are quoted in the light of the past history, I am not persuaded that there is not sufficient authority contained in Section 353 to authorize the payment by the Probate Judge to the License Inspector of the penalties of 15% collected in cases of delinquency.

While the matter is not entirely free from doubt, it would seem that the general intent of the Legislature to effect this is reasonably clear and can be gathered from the language of the statute read in the light of its history and contemporaneous circumstances. That the intention of the Legislature gathered from the entire instrument is the law, is well settled by the following cases:

"The fundamental rule of construction is to ascertain and give effect to the intention of the Legislature as expressed in the Statute.—Ala. 1922. *Street v. Cloe*, 93 So. 591, 207 Ala. 631.

"Ala. App. 1925. Fundamental rule in construction of statute is to ascertain and give effect to Legislature's intention, expressed in statute, without assuming legislative authority, but where language is of doubtful meaning or adherence to strict letter would lead to injustice, absurdity or contradictory provisions, courts must ascertain true meaning, or, if impossible, give reasonable construction consistent with legal principles.—Allgood v. State, 104 So. 847, 20 Ala. App. 665, certiorari granted Ex parte Allgood 104 So. 851, 213 Ala. 426.

"Ala. 1909. The courts in construing a statute, must look to the context, the spirit and the whole of the statute, as well as other statutes, to reach the true intent of the Legislature." City of Birmingham v. Southern Express Co., 51 So. 159, 164 Ala. 520.

"A thing within the intention of the enactors of a statute is as much within the statute as if it were within the letter hereof; and a thing within the letter is not within the statute, unless within the intention."—Id.

"Ala. App. 1911. Courts in construing a statute will give it that construction which will **effectuate the purpose** of the Legislature in passing it."—Lynn v. Broyles Furniture Co., 57 So. 122, 3 Ala. App. 634.

"Ala. 1914. A literal interpretation which would defeat the manifest purposes of a statute and permit evasions will not be adopted if any other reasonable construction consistent with such purpose can be given to it."—Brown v. Pittsburgh Life & Trust Co., 65 So. 699, 10 Ala. App. 614, judgment reversed Ex parte Pittsburgh Life & Trust Co., 66 So. 489.

"Ala. 1905. In interpreting a law it is legitimate to take into consideration the history which led up to its enactment, the surrounding circumstances, and the ends intended to be accomplished thereby."—Prowell v. State, 39 So. 164, 142 Ala. 80.

"Ala. 1909. Statutes on a subject should be construed together so as to produce a harmonious system, if possible."—City of Birmingham v. Southern Express Co., 51 So. 159, 164 Ala. 529.

"Construction that will lead to false results not intended should be avoided."—214 N. Y. S. 113. Allgood v. State, 20 Ala. App. 665, 104 So. 847.

"Intent must prevail over literal wording." 307 Mo. 49, 269 S. W. 623, 242 P. 823.

"Rule of strict construction is subordinate to rule of reasonable sensible construction having in view effectuation of legislative purpose."—131 S. E. 421 (S. C.)

"That system is intended to be workable is cardinal rule in interpreting original provisions."—215 N. Y. S. 116.

"In question of legislative intent courts are bound by no rule that hinders discovery of rational genuine intent of legislature."—205 N. Y. S. 689.

"Statutes not construed to require impossibilities or to lead to absurd results, if capable of any other reasonable interpretation."—263 S. W. 526 (Mo.)

"To ascertain legislative intent court should use all aids available and not limit itself to legal maxims."—186 N. W. 485 (Mich.)

I therefore hold that the penalty of 15% collected by the Probate Judge in cases of delinquency is payable to the License Inspector.

The statute of 1935 contains express provision for the payment of 15% of the fine or penalty imposed in cases of criminal prosecution.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 22, 1935

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

Taxes—Redemption—Senate Bill No. 2 approved September 15, 1932, allowing credit on redemption for taxes actually paid on lands sold to the state for years subsequent to such sale, held to apply to all redemptions made subsequent to October 1, 1935 of lands sold prior thereto, where such payments were actually made prior to October 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Senate Bill No. 2 by Walker, approved September 15, 1932, provided for the redemption of lands sold for taxes and bid in by the State prior to the effective date of House Bill 324 which was approved July 10, 1935. Said Senate Bill No. 2 contained a proviso to the effect that the person redeeming the land from tax sale was not required to pay the taxes accruing subsequent to the sale if such taxes had been properly assessed and paid to the county tax collector.

"Section 269 of House Bill 324 approved July 10, 1935, which became effective October 1, 1935, contains no such proviso. On the other hand, said Section 269 contains a provision to the effect that the person redeeming lands from the State shall deposit with the Judge of Probate the amount of money for which the lands were sold with interest thereon from date of sale together with the amount of all taxes found to be due

on such lands since the date of sale, as provided herein.' Subdivision (b) of Section 260 provides the method of determining the amount of taxes found to be due on the property and apparently does not take into consideration the fact that some of the subsequent taxes may have been paid to the tax collector since the property was bid in by the State.

"We ask your formal opinion as to whether or not the Judge of Probate, in allowing the redemption of lands bid in for the State under the provisions of Section 269 supra, should be required to collect taxes for every year subsequent to the tax sale or whether he should leave off the collection of any taxes which may have been paid to the county tax collector since the date of sale.

"You will bear in mind that Section 247 provides for the method of assessing taxes on lands which have been bid in by the State and such Section does not contemplate a regular assessment in the usual manner.

Thanking you for your early attention to this matter, we are."

While the statutes are in some confusion, I cannot believe that the legislature intended a double payment for the years subsequent to the tax year, the taxes for which the land was sold.

Prior to the Act of 1932, there was a definite method of determining the amount to be annually paid for the years subsequent to the sale to the State (278 Comp. 1929). (This provision appears as Section 247 of the 1935 Revenue Act. However this provision is, for redemption purposes at least, made ineffective if not actually repealed by H. 835 by Lusk approved September 14, 1935, amending Section 269 of the 1935 Revenue Act).

This general method was not changed by the Walker Act of 1932. This Act merely affected Section 278 of the 1929 Comp. in case the property had been assessed and the taxes actually paid. This Act continued in effect until October 1, 1935.

The new Revenue Act contains no such provision and hence for the future repeals it. It is necessary though to give effect to the Act of 1932 up to October 1, 1932 up to October 1, 1935.

It is therefore my opinion that in allowing redemptions after October 1, 1935 of property sold prior thereto, if it appear that lands sold to the State have actually been assessed and the taxes paid thereon for any years prior to October 1, 1935, credit should be given on redemption for such annual payments. This is not contrary in spirit at least to the annual valuation provisions of Section 269 as amended.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

November 22, 1935

Hon. Henry S. Long, President,
The State Tax Commission,
Capitol.

Attention: Mr. Harry Simon.

Licenses—Liability for plumber's license under Schedule 110 of Section 348 of Revenue Act of 1935, is based on doing business as a plumber rather than on having an established place of business.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 4, 1935, in which you request my opinion as to the liability of a person doing plumbing work, but who does not maintain a place of business nor does he maintain a shop.

In answer to your inquiry, I am of the opinion that the liability for a plumber's license under Schedule 110 of Section 348 of the Revenue Act of 1935, is based on "doing business as a plumber" and not the maintaining of an established place of business.

Schedule 110 of Section 348 of the Revenue Act of 1935, provides as follows:

"SCHEDULE 110. Each person doing business as a plumber, steam fitter, or operator of a tin shop or roofing shop, in towns or cities of fifty thousand inhabitants, or over, twenty-five dollars (\$25.00); in cities and towns of ten thousand inhabitants and less than fifty thousand inhabitants, fifteen dollars (\$15.00); in cities and towns of less than ten thousand inhabitants, ten dollars (\$10.00); in all other places whether incorporated or not, five dollars (\$5.00)."

The schedule above quoted provides for a license upon "each person doing business as a plumber." The fact as to whether or not there is an established place of business is immaterial.—**Biennial Report of Attorney General, 1930-1932, page 413.**

The opinion above cited held that where a person is doing business as a plumber, he is liable for a license wherever he is doing business whether he has an established place of business in such town or not. Said opinion interpreted Schedule 87 of Section 361 of the Revenue Act of 1919, which schedule is in substance the same as the one under consideration.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 23, 1935

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

1. Probate Judges authorized to issue duplicate drivers' license where affidavit is made that same were lost or stolen and application for such duplicates are made.

2. No fee allowed to the Judge of Probate for issuing such duplicate.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 2, 1935, in which you state:

"Many people have already lost their Drivers' Licenses or had them destroyed. I call your attention to Section 3, Act No. 331, known as the Driver's License Act. Will you please advise me as to whether I should issue a duplicate? If so what should be marked on same so as to relieve me of responsibility. I understand that the applicant is to make an affidavit showing that the original is lost."

I also have a letter from Judge Stewart, Judge of Probate of Coosa County, asking if Judges of Probate are allowed an issuance fee for duplicates.

Replying to these inquiries, I call your attention to that portion of Section 3 of Act No. 331, known as the Driver's License Act, which provides as follows:

"Provided further, that no operator or driver of a motor vehicle shall be subject to a fine by reason of the losing of his driver's license card, provided that he makes affidavit that the same was lost or stolen within a period of twenty (20) days preceding and that his application for a duplicate operator's license card was made within ten days of the discovery of the loss of same."

In my opinion, this is authority for the issuance of a duplicate license. No particular form seems to be provided for, but I assume that such duplicate should show the number of the original and should be marked across the face "duplicate." In other respects it would be the same as the original license and would of course bear the original signature of the officer issuing the license as in the case of the original. Apparently there is not provided any fee for the issuance of this duplicate. Under the well known rule that an officer claiming a fee must point to specific authority giving him such fee, I am constrained to hold that there is no fee provided for the issuance of such duplicate. This conclusion is emphasized by that proviso of Section

8 stating "which said fee shall include all compensation to the Probate Judge for performing all the duties here prescribed. (Emphasis ours).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 25, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Licenses—

Refund of money erroneously paid for licenses—Inhibition in Section 366, Chapter 1, Article 14, of the Revenue Act of 1935 against making refunds when application is made more than one year from date license is alleged erroneously to have been paid applies to licenses issued prior to October 1, 1935, provided of course, that the date of the application for refund is made subsequent to October 1, 1935, the effective date of the 1935 Revenue Act.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 21, 1935, which follows:

"I quote a paragraph of a letter just received which prompts this request:

" 'A point of information I would like to clear up in the Boggs petition is this: The Act to which you refer and with which I was familiar with at the time of filing said petition, says nothing as to the disposition of licenses which had been paid prior to the passage of said Act. In that event, the attempt to refuse payment under the new law for licenses payable and paid prior to that time, would make the same retroactive and therefore void as to such payments. I would appreciate any courtesy you might extend to me, in obtaining an opinion from the Attorney General on that matter.'

"Because of this inquiry and since it will doubtless occur in the future, I would like to know whether the inhibition in Section 366, (page 381) of the recent Revenue Bill against a refund of money erroneously paid for a Privilege License when application occurs more than a year from the date such license was issued applies to licenses issued prior to October 1, 1935."

The section under consideration in your letter of inquiry is Section 366, Chapter 1, Article 14 of the Revenue Act of 1935, which reads:

"Section 366. Any person who through a mistake or error on the part of the Judge of Probate has paid to the Judge of Probate money that was not due from him for such license, or by such mistake has paid to the Judge of Probate for such license an amount in excess of that required by law for the business to be carried on by such person under the license such person shall be entitled to have refunded less commission retained by Probate Judge to him the amount in either event so erroneously collected by the Judge of Probate, and the provisions of this Section shall apply only to cases when application for refund is made within one year from date such license is alleged erroneously to have been paid."

It is my opinion that the inhibition contained in Section 366, *supra*, against making refunds when application is made more than one year from date license is alleged erroneously to have been paid, applies to licenses issued prior to October 1, 1935, provided, of course, that the date of the application for refund is made subsequent to October 1, 1935, the effective date of the 1935 Revenue Act.

Under Sections 3144-46 of the Code of Alabama, 1923, the Legislature granted to taxpayers who pay taxes erroneously or under mistake of fact a right of refund, if they started proceedings to procure said refund within the date of the alleged payment. By Acts 1931, page 811, the Legislature amended this Section to change the six year limitation to one year. The Supreme Court of Alabama, in the case of *First National Bank of Scottsboro v. Jackson County*, 150 So. 690, construed Sections 3144-46 of the Code of Alabama, *supra*, as amended by the Act of 1931, *supra*. The proceeding there was brought after amendatory act, *supra*, was passed and went into effect, and more than one year after the alleged payment, but less than six years thereafter. The Court there said:

"Plaintiff's last payment was made January 20, 1931. The present action was commenced on October 11, 1932. As originally enacted, the statute permitted a recovery within six years from the date of payment. Section 2146, Code 1923. But by the Act approved July 28, 1931 (General Acts 1931, p. 811), this section was rewritten with the single change of a substitution of one year in the place of six for the commencement of the suit, and it appears the present suit was brought more than one year after the approval of the amendatory act. This section and the two preceding constituted one act (General Acts 1907, p. 639), and were codified therefrom.

"A county is a mere political subdivision of the state, and no right to a suit against it exists except by statute. *Ex parte State*, 52 Ala. 231, 23 Am. Rep. 567; *Hamilton v. Jefferson County*, 209 Ala. 517, 96 So. 623. Prior to the enactment of what is now section 181 of the Code 1923, the county was not subject to suit, and since that time and prior to the enactment here in question, any such suit was subject to the limitations of the present Code, section 228. *Lowndes County v. Hunter*, 49 Ala. 507.

"By the Act of 1907 (sections 3144-3146, Code 1923), therefore, the Legislature granted to taxpayers, who paid their taxes under an invalid law, a new privilege or benefit, for prior thereto no action would lie for taxes voluntarily paid. *Raisler v. Mayor, etc., of Athens*, 66 Ala. 194; *Gachet v. McCall*, 50 Ala. 307.

"As said in *Luke v. Calhoun County*, 56 Ala. 415; 'The legislature has full power to take away by statute rights, not vested, which have been conferred by statute.' See, also *Blake v. State*, 178 Ala. 407, 59 So. 623. And speaking of the repeal of a statute conferring a right to sue the State, the court, in *Ex parte State of Alabama*, 52 Ala. 231, 23 Am. Rep. 567, said: 'Such statutes are matters of grace, confer privileges,—they do not create rights. * * * The power to withdraw is commensurate with the power to confer, and when the privilege is withdrawn, the citizen is remitted to the condition in which he stood when it was conferred.'

" 'When a right given by statute is not by nature a vested right and at the time of the repeal of the statute is still inchoate * * * it will fall with the statute, unless expressly excepted.' 59 *Corpus Juris* 1188.

"Illustrative of this general rule is the case of *Ex parte State of Alabama*, 52 Ala. 231, 23 Am. Rep. 567, where it was held that the repeal of the law authorizing suits against the state strips a court, in which such a suit is pending, of all jurisdiction to proceed further in the cause, and wherein was quoted with approval the following expression from *Beers v. State of Arkansas*, 20 How. 529, 15 L. ed. 991: 'This permission (to sue the State) is altogether voluntary on the part of the sovereignty; it follows that it may prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted, and may withdraw its consent whenever it may suppose that justice to the public requires it.'

"So in the instant case the Legislature has granted to the taxpayer a new privilege to sue the county under such conditions and restrictions, among them, as originally enacted, a requirement that the suit be brought within six years. But the amendment in the Act of 1931 changes this period to one year, and we think the amended act is here to be construed as if the statute had been originally enacted in this amended form. 59 *Corpus Juris* 1096.

"There is here no element of contract involved, for, as said in *Alabama v. United States*, 282 U. S. 502, 51 S. Ct. 225, 226, 75 L. Ed. 492: 'Levying a tax does not create a contract. It is a unilateral act of superior power, not depending for its effect upon concurrence of the party taxed.' Differently expressed is the same thought in *State v. Fleming*, 112 Ala. 179, 20 So. 846, 847, cited approvingly in *Turner v. State*, 226 Ala. 269, 146 So 601: 'In one sense, there is no element of contract in taxation, in that the taxing power imposes the tax and enforces its collection whether the party taxed assents or dissents.' True, in a proper case, recovery may be had in an action for money had and received (*Ward v. First Nat. Bank* (supra), or in a civil action as for a debt (*Turner v. State*, supra). But this relates to a matter of remedy only and affords no foundation for the insistence that plaintiff here has been deprived of any vested

right or that the application of the amended act to its case in any manner impairs the obligation of a contract."

Following the reasoning of the Court in the Jackson County case, *supra*, we must conclude that where an application for refund of license erroneously paid is made after October 1, 1935, the effective date of the 1935 Revenue Act, it must be made within one year from the date such license is alleged erroneously to have been paid, as provided by Section 366, *supra*.

Of course, Section 366, *supra*, also applies to all licenses issued subsequent to October 1, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 26, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Taxation. Board of Review.

(1) Board of Review without authority to reopen assessment, subsequent to regular meeting on first Monday in June, which hearing cannot extend beyond second Monday in July.

(2) Board of Review in cases where valuation was increased over previous year, and notice thereof was not served on taxpayer cannot reopen such assessment after the "taxes become delinquent."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Will you please advise me as soon as possible on the following questions:

"1. Has the County Board of Review the authority to raise or lower the Assessed valuation of a taxpayer's property after such taxes become due on October 1st?

"For example: 'A's property is assessed as of October 1, 1935, for taxes due October 1, 1934, at the same valuation as the preceding year. 'A' does not file a written objection to the assessment with the Board prior to their regular meeting for hearing objections, on the first Mon-

day in June. At various dates in December 1934 and January and February 1935 the Board notifies the Tax Collector that 'A's assessment for the preceding year has been reduced \$, by resolution passed by the Board, advertising the collector to reduce A's taxes accordingly and to take an error for the difference.

2. Does the law require that a taxpayer be notified as to the assessed valuation set on his property, in the event such valuation has not been changed from the valuation of the preceding year."

In reply, I call to your attention two opinions appearing in the Biennial Report of 1930-32 at pages 270 and 275 which discuss the general question presented by you fully. The latter opinion, while not directly addressed to your inquiries, largely answers them.

My answer to your first question based on the facts given by you is in the negative.

In *Daffin v. Scotch Lumber Co.*, 236 Ala. p. 33, at page 36, in a case where protest was made **before the taxes actually became delinquent but subsequent to the last Monday in May**, the Supreme Court said:

"The jurisdiction and power conferred by said section 57 is judicial, and is limited to 'hearing objections filed in writing to any assessments or valuations fixed as provided' in the act, and it is familiar law, that 'Conditions precedent to a statutory review by an officer or board must, of course, be complied with. Whatever may be the relief sought, the party applying for it must comply strictly with the provisions of the statute which confers the right.' 3 *Cooley on Taxation*, 1206; *Birmingham Building & Loan Association v. State*, 120 Ala. 403, 25 So. 52.

"The petition for the writ of mandamus clearly shows that the objection to the assessment was not filed on or before the last Monday in May, and, unless the statute contains an exception to this limitation on the taxpayer's right of review, and the petitioner's case falls within the exception, the proceedings of the board were *coram non judice* and void."

In your case no protest was filed, and therefore the Board had no right to reopen and change the assessment.

The court later in the same case made this comment:

"Under the provisions of the last-cited sections (sections 36, 55), if the value of the property listed by the taxpayer is increased by the tax assessor over the assessed value for the previous year, or if new items of property are added to the assessment by the tax assessor or the board of review, the taxpayer is entitled to notice of such increase or new item, and if such notice is not given, the taxpayer is given the right, on proper application to the board of review at any time before the taxes become delinquent, to have the assessment reopened and to a hearing, and, if the valuation is excessive or the added items are not assessable to him, to have the assessment corrected, and to this end section 62 of the act gives

the board full power and jurisdiction. Acts 1923, pp. 183, 184, Section 62, Revenue Code 1929, Section 192."

It is to be noted that the notice is to be given "if the value for the previous year is increased by the tax assessor over the value for the preceding year. There is a similar provision in cases where the Board of Review takes similar action.

This contemplates special notice in my opinion only in cases where such value is increased. However, the general notice provided by Section 36 of the Revenue Act of 1923. (Sec. 186, 1920 Revenue Comp.) would operate as sufficient notice in all cases properly before the Board of Review except in cases where the valuation of the previous year has been increased, when the special notice provided by Section 157 (1929 Comp.) is required.

In your case you state the valuation was not increased over that of the preceding year. Therefore the general notice provided by Section 186 was all that was required.

While Section 157 contains this proviso:

"Provided, however, that the taxpayer shall have the right any time before the taxes become delinquent to appear before the Board of Review and have the assessment of his property re-opened, if satisfactory proof is made that the taxpayer or his agent did not receive notice of such increase."

its applicability is necessarily limited to those cases where special notice is required, which is not the case under the facts submitted by you.

Moreover this right to reopen in any case is limited to the time the taxes "become delinquent." There would therefore be no authority in any case to reopen the assessment after December 31, when the taxes become delinquent.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 27, 1935

Hon. Roy Sanderson,
Judge of Probate, Marion County,
Hamilton, Alabama.

Judges of Probate—Must make record of all motions voted on by the Court of County commissioners.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 1, 1935, which is as follows:

"Yesterday in Commissioner's Court Commissioner A made a motion, which was voted on by the Court. The motion lost and later Commissioner B made a motion to exclude the motion from the minutes of the Court. Commissioner A contends that his motion should become a part of the minutes because it was voted on and was a transaction of the court. It has been the custom in this county to record all motions whether voted on or not. I place all motions before the court.

"The question I want to know is whether all motions that are voted on become part of the minutes if the commissioner contends for it."

I call your attention to Section 6763 of the Code of Alabama, 1923, which reads as follows: "The Judge of Probate must record the proceedings of the court, make all necessary orders, and issue all process necessary to sustain its jurisdiction or maintain its authority."

The duties of the Probate Judge imposed by this section were held mandatory by the Supreme Court of Alabama in the case of Fountain, Judge of Probate, et al. v. State ex rel Hybart, 211 Ala. 586. A motion voted on by the Court of County Commissioners is part of the proceedings of the Court and therefore it is my opinion that the Judge of Probate must record all motions voted on by the courts, as part of the record of the proceedings of the court.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 29, 1935

Hon. W. G. Little, Sumter County,
Probate Judge, Sumter County,
Livingston, Alabama.

License—

1. Out-of-State firms receiving and collecting articles for cleaning, pressing and dyeing in the State of Alabama, are liable for the State and County license provided for such reception and collection in each county of the State in which said articles are received and collected.

2. Out-of-state firms receiving and collecting articles for laundry in the State of Alabama, are liable for the State and County li-

cense provided for such reception and collection in each county of the State in which said articles are received and collected.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 26, 1935, which follows:

"Two laundries in Meridian, Mississippi, send Agents to solicit business in Sumter, Marengo and Choctaw Counties. They solicit laundry, cleaning and dyeing, the agent doing his own collecting of such articles.

They have no central collecting place.

"1. I would like to know whether the \$15.00 license referred to in Schedule '35' (page 248) of the recent Revenue Bill covers all three counties or whether they are required to pay \$15.00 in each county.

"2. Whether this license covers cleaning and dyeing as well as laundry.

"3. Whether the out of State man referred to in Schedule '79', page 271 is required to pay the license for each town where he has no collecting point or the one license for the county.

"4. Whether one license will cover his points in Sumter, Marengo and Choctaw, or he is required to purchase a license for each county.

"5. How many licenses are required of an out-of-state laundry, soliciting laundry, cleaning and dyeing in Alabama?"

As I interpret your letter, the "laundries" in Meridian, Mississippi, to which you refer, have agents who operate in Alabama in such a manner as to make them liable for a license for the reception and collection of articles to be cleaned, pressed and dyed and for a license for the reception and collection of articles for laundry. The last sentence of Schedule 35, Schedule 348, Chapter 1, Article 13, of the Revenue Act of 1935, which is the Schedule levying the license for operation of a cleaning, pressing and dyeing business, reads:

"Provided that a person not having a place of business within the State of Alabama where such work is actually performer, shall pay a license of Fifteen Dollars (\$15.00) for the reception and collection of such articles."

The last sentence of Schedule 79, Section 348, Chapter 1, Article 13, of the Revenue Act of 1935, which is the Schedule levying a license for the operation of a laundry business, reads:

"Provided further that a person not having a place of business in State of Alabama where such work is actually performed, shall pay a license of Twenty-five Dollars (\$25.00) for the reception and collection of laundry."

As you see from the above quoted parts of the Revenue Act, *supra*, there is a license for out-of-state firms receiving and collecting articles for cleaning, pressing and dyeing, and also a license for out-of-state firms receiving and collecting articles for laundry. It makes no difference that the same firm is engaged in both businesses. It must pay a license for each business in which it is engaged, if a license is required for engaging in such business.

We next come to the question of whether or not a person who is required to pay a State license under the Schedule quoted above must also pay a County license. This question is clearly answered by subparagraph (b) of Section 350, Chapter 1, Article 14, of the Revenue Act of 1935, which reads:

"(b) There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the State, or fifty per cent of the State license or privilege tax, except as herein otherwise provided."

Therefore, the firms mentioned in your letter must pay, in addition to the amount of the State license required of them by Schedule 35, *supra*, and Schedule 79, *supra*, fifty per cent of these amounts as county license, as provided by sub-paragraph (b) of Section 350, *supra*.

The next question that confronts us is whether or not a firm that is required to pay the above licenses is only required to pay one State and County license, or whether or not it must pay a State and County license in each county in which it operates. Subparagraph (a) of Section 350, *supra*, provides:

"(a) Whenever a license is levied in this Act, there shall be collected both a State and County license for each place of business, except as specifically otherwise provided."

The firms mentioned in your letter are required to pay license for the privilege of receiving and collecting. They receive and collect in more than one county, and it may be said, therefore, that they have a place of business in each county in which they receive and collect, even though they actually have no established place of business in any county. Therefore, it is my opinion that they should pay the State and County license provided for such businesses in each county in which they receive and collect. Summarizing the above, we conclude that an out-of-state firm which receives and collects articles for cleaning, pressing and dyeing, in the State of Alabama, is liable for a State license of \$15.00, and a county license of fifty per cent of this amount, in each county in which it receives and collects such articles, as provided by Schedule 35, *supra*, and subparagraph (b), of Section 350, *supra*; and that an out-of-state firm which receives and collects articles for laundry in the State of Alabama is liable for the State license of \$25.00, and a county license of

fifty per cent of this amount in each county of the State in which it receives and collects such articles, as provided by Schedule 79, supra, and subparagraph (b), of Section 350, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 30, 1935

Hon. Sam Drinkard,
Tax Collector, Marengo County,
Linden, Alabama.

Interest on delinquent taxes should be collected at rate of 8% per annum from date of delinquency through September 30, 1935 and at the rate of 6% thereafter.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 1, 1935, stating:

"I, as a new tax collector, am collecting 1934 uncollected tax of J. J. Marion, the ex-tax Collector, who died on the 25th of September, 1935. Some of the taxpayers are not satisfied with me collecting 8% interest on this tax, and insist that they are only entitled to pay 6% interest.

"Will you please render an opinion at once, and oblige?"

Replying, I advise that in an opinion rendered to Joseph B. Crow, Tax Collector of Mobile County, under date of February 28, 1935, I held that delinquent taxes were subject to interest at 8% (Section 3056 of the Code of 1923) from date of delinquency.

This was changed by the Revenue Act of 1935 to 6% but in my opinion such statute has a prospective effect. You should therefore collect interest at the rate of 8% per annum from date of delinquency through September 30, 1935, and at the rate of 6% thereafter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 30, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Dental Associations—

Act No. 435 approved September 13, 1935 held to require the payment to the Alabama Dental Association of 25% of all monies **paid into the State Treasury** by dentists for license which amount does not include the Probate Judge's commission for remitting money collected on licenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 8, 1935, as follows:

"House Bill No. 968 approved September 13, 1935, provides 'that 25% of all moneys paid into the State Treasury by Dentists for licenses or occupational taxes shall be paid over annually to the Secretary-Treasurer of the Alabama Dental Association.'

"1. Does this apply to 25% of moneys remitted by Probate Judges after deducting their commission or 25% of the original licenses."

In reply, I beg to advise that Section 1 of Act No. 435 House Bill 968 approved September 13, 1935 to which you refer provides in part as follows:

"That twenty-five per centum of all monies **paid into the State Treasury** by dentists for licenses or occupational tax shall be paid over to the Secretary-Treasurer of the Alabama Dental Association."

It is my understanding that the Probate Judge deducts his commission of 2½% allowed him for remitting money collected for licenses before he remits the same into the State Treasury.

Therefore under the specific terms of the Act, the twenty-five per centum payable to the Dental Association would be twenty-five per centum of the actual amount paid into the State Treasury.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

December 2, 1935

Hon. H. M. Brittain,
Judge of Probate,
Randolph County,
Wedowee, Alabama.

Schedule 10 of the 1935 Revenue Law is constitutional and the Probate Judge should collect all of license required thereunder. There is no authority for Probate Judge to collect part of a license and if applicant fails to pay all of the license and fee, prosecution should commence when same becomes delinquent. The State of Alabama is not a collecting agency for the State Bar Association.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of October 14, 1935, in which you state:

"As probate Judge of Randolph County, Alabama, I am writing for a ruling of the Attorney General on the following, same pertaining to the 1935 Revenue Code, same effective Oct. 1st, 1935; and is as to Schedule 10; same applicable to attorneys:

"The lawyers of this County en masse practically say that section of the Revenue Code, or Schedule 10 is unconstitutional in part; in fact they say they are preparing to tender the Probate Judge (myself) the sum of \$15.50 in legal tender and demand the license; their contention is that the State cannot become a collecting agency of the State Bar Association; and further that the license as shown on the fact of said schedule is only \$15.00; further they say that the State Bar Association since 1923 has been trying to obtain and collect this fee by indirect and devious methods and that by tacking the same in the License Schedule the said Association is indirectly trying to obtain that which is in itself illegal.

You request my opinion:

"1. The question is that, is Schedule No. 10 of the 1935 Revenue Code, same effective Oct. 1st, 1935, constitutional in its entirety?

"2. Is or should the Probate Judge accept the \$15.50 under protest and hold the same pending the court test of this question, or should I as Probate Judge insist on the sum of \$25.00 plus 50c fee, and let prosecution commence against the lawyers after Oct 31st?

"3. Further, is the State of Alabama a collecting agency for the State Bar Association and is it legally or constitutionally so?

"4. Again, must I insist strictly on the lawyers paying the \$25.00 plus the fee, I wish to do my duty righteously and conscientiously and as the law demands of me?

It is my opinion that your first question should be answered in the affirmative.

I have carefully examined Schedule 10 of the 1935 Revenue Law and I have been unable to find where said schedule violates any provision of the Constitution of Alabama.

I call your attention to the following authorities:

Phoenix Assurance Company v. Montgomery Fire Department, 117 Ala. 631, 20 So. 843;

Dunlap v. State, 16 Ala. App. 441, 78 So. 639;

Cobbs v. Home Insurance Company, 18 Ala. App. 206, 91 So. 627.

Cooley Constitutional Limitation (8th Ed.) p. 1026 et seq.

Irrespective however of the validity of that portion of Schedule 10 providing for the use by the State Bar Association of \$10.00 of the license levied, I am of the opinion that the Schedule is so severable that the levying portion, which in plain terms levies an annual license of \$25.00, is not affected by any weakness of the latter portion which may possibly exist.

"An Act with invalid part thereof deleted if complete within itself, sensible and capable of execution, will stand notwithstanding partial invalidity."

Springer v. State, ex rel., Williams, 229 Ala. 339, 157 So. 219.

In answering your second question it is my opinion that the Probate Judge should collect all of the license prescribed by Schedule 10 of the Revenue Law, as there is no statute in Alabama authorizing partial payment of a license, even to a person authorized to receive such payments. If all of the license and fee is not paid, then prosecution should commence when the same is delinquent.

"Payment of a license fee may be and generally is required as a condition precedent to the issuance of a license and engaging in business, and a license issued before such payment is void."—37 C. J. 251, Sec. 119, N. 87-88.

"Primarily the amount of the fee or tax for which a license is liable is the full amount prescribed for the license period for the particular occupation or privilege in which he is engaged and a valid license cannot be issued for a fee less than prescribed."—37 C. J. 250, Sec. 116 N. 56-57.

"The law ordinarily intends that taxes shall be paid in full at one time, and unless it is otherwise provided by statute, a taxpayer cannot

tender a portion of the tax and demand a receipt therefor."—61 C. J. 965, Sec. 1244, N. 32-33.

In answering your third question, the State of Alabama is not a collection agency for the State Bar Association, but the Legislature of Alabama has authority to require certain rules and regulations for the lawyers of the State and to provide for the State Bar Association.

Ex parte Thompson, 228 Ala. 113, 152 So. 229; In re Pite, 228 Ala. 4, 152 So. 246 (and cases cited in the above cases).

I think that in answering your second question, I have also answered your fourth question fully.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 2, 1935

Hon. S. W. Hawkins,
Chairman, Board of Registrars,
Jefferson County,
Birmingham, Alabama.

Elections—An alien who has become a naturalized citizen is due all poll tax from the time he becomes an inhabitant of this State and is over twenty-one years of age and under forty-five years of age, regardless of when he became naturalized.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 20, 1935, which reads in part as follows:

"There is an Assyrian, by birth, living in Jefferson County. He is thirty-seven years of age and has lived in this State and County for several years, but has just been naturalized .

"I desire an opinion as to what poll tax he is due, and as to whether or not he would be due a poll tax from the date that he became twenty-one years and was living in Alabama, or whether or not he would be due to pay a poll tax from the day he came naturalized.

In answer to your inquiry, I am of the opinion that a poll tax is due by each inhabitant of this State over the age of twenty-one years and under forty-five years, not exempt by law.—Section 194, Constitution, 1901; Section 3029, Code of Alabama, 1923; Biennial Report of Attorney General 1928-1932, p. 723.

The fact of being a foreigner, not naturalized, and, therefore, not qualified to vote, does not exempt from payment of poll tax. Being due a poll tax is dependent upon age and residence and the further fact that one is not exempt from payment of poll tax. The fact that one is an unnaturalized foreigner does not constitute an exemption from payment of poll tax.

Poll tax is due October 1st of each year.—*Shepherd v. Sartain*, 185 Ala 439.

It is due to be paid in the County in which such person legally resides at the time it is due.—*Frost v. State*, 153 Ala. 654.

The payment of all poll tax due is one of the conditions upon which a person is allowed to vote in Alabama.—**Section 178, Constitution of Alabama.**

It, therefore, follows that the person named by you, unless exempt for some other reason than as stated by you, must pay a poll tax for each year he has been a resident of the State of Alabama since he was twenty-one years of age. To determine this, he must count from the first day of October after becoming twenty-one years of age. If he became twenty-one years of age on the first day of October, his first poll tax became due that day. If he became twenty-one years old on October 2nd, his first poll tax became due October 1st of succeeding year.—*Shepherd v. Sartain*, 185 Ala. 439 30th head note.

An opinion of this office rendered to the Judge of Probate of Cullman County on March 9, 1929, (Biennial Report of Attorney General, 1926-1930, p. 229) being in conflict with the above, is hereby overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Judge of Probate entitled to receive commission of two and one-half per cent on entire twenty-five dollars collected for attorney's license under Schedule 10 of the 1935 Revenue Act. Alabama State Bar Association to receive ten dollars of each twenty-five dollars collected by Judge of Probate under Schedule 10 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of November 8, 1935, in which you state:

"Schedule '10' page 238 of the Revenue Code of 1935 provides that 'Each Attorney engaged in the practice of law shall pay an annual license of Twenty-five dollars to the State.' In the same schedule the law provides that 'Ten Dollars of the license herein levied—shall remain in the State Treasury and shall constitute a separate fund to be disbursed by the State Treasurer on the Order of the Board of Commissioners of the Alabama State Bar Association.' "

You request my opinion:

"1. Does the Probate Judge receive a commission on the entire twenty-five dollars?

"2. Does the Alabama State Bar Association receive the entire Ten Dollars in each instance or Ten Dollars less the commission allowed the Probate Judge?"

It is my opinion that your first question should be answered in the affirmative. Schedule 10 of the 1935 Revenue Act provides that, "Each attorney engaged in the practice of law shall pay an annual license of twenty-five dollars to the State." The entire payment made to the State by an attorney under the section, supra, is for a State license to practice law for one year, as the statute expressly states that no license shall be paid to the County.

As Schedule 10 of the 1935 Revenue Law, does not prescribe the way or the person to whom said license shall be paid, it is necessary to look to some other section of the law to arrive at the legislative intent in regard to the collection of said license. It is my opinion that the Legislature by omitting to provide any definite or special procedure for the payment of said license intended for the license to be collected by the Judge of Probate in the same manner as other license are collected.

"The intention of the Legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the Court, shall be all aids available, ascertain and give effect, unless it is in conflict with constitutional provision, or is inconsistent with the organic law of the State, to the intention or purpose of the legislature as expressed in the statute."—59 Corpus Juris, p. 948.

Street v. Coe, 207 Ala. 631, 93 So. 591;

Sunflower Lumber Co. v. Turner Supply Co. 158 Ala. 191, 48 So. 510.

I refer you to an opinion of the Attorney General to Hon. John Brandon, State Treasurer, on September 10, 1935, which held that the license fee of twenty-five dollars, under Schedule 10 of the 1935 Revenue Law, is to be collected through the Probate Judge in the same manner as other licenses are collected.

Section 365 of the 1935 Revenue Act at page 381, provides the amount of compensation to be paid the Probate Judge for collecting the licenses due the State. Part of said section is as follows:

" * * * The Judge of Probate shall be entitled to receive two and one-half per cent of the amount of money collected for licenses due the State, which he may deduct from his remittance to the State Treasurer, and he shall be entitled to the same amount as compensation for collecting licenses due the County, which amount he may deduct from the payment made by him to the County Treasurer, but he shall not be allowed any commission on any money not remitted by him within ten days from the end of the month. * * *

As the Probate Judge should collect the license, and there is expressed authority for the Probate Judge to be allowed a percentage on the money collected for licenses due the State, it is my opinion that the Probate Judge is entitled to receive a commission of two and one-half per cent on the entire twenty-five dollars collected for a State license under Schedule 10 of the 1935 Revenue Act.

Answering your second question, it is my opinion that the Alabama Bar Association is entitled to receive ten dollars out of each twenty-five dollars collected by the Judge of Probate under Schedule 10 of the 1935 Revenue Law. The language used by the Legislature is very plain and is not ambiguous in any respect. I call your attention to the following:

"Ten Dollars of the license herein levied together with the fees paid by applicants, as otherwise provided by law, shall remain in the State Treasury and shall constitute a separate fund to be disbursed by the State Treasurer on the order of the Board of Commissioners of the Alabama State Bar Association."

I do not see how the Legislature could have expressed its intention in any plainer words or with more forcible language than as expressed above. In my opinion the only possible construction that could be placed on the words used in the statute is that the Bar Association is entitled to ten dollars and not ten dollars less the cost of collecting the money. If the Legislature had intended for the costs to come out of the amount given to the Bar Association, it is my opinion that the statute would have read ten dollars less all the costs and charges of collecting said money.

In the case of *State v. Lamar*, 178 Ala. 77, 59 So. 473, the Supreme Court of Alabama said:

"The Court cannot, on its own notion of what the Legislature intended to do, or ought to have done, disassociate from the language employed, undertake to cure the inanities of the statute. The plain and sound principle is to declare it a *lex scripta est*, although so understood the statute leads to absurd and mischievous results, or to consequences not contemplated by the Legislature; for Court are not to inquire as to the motive of the Legislature, nor to depart from a meaning clearly conveyed, in unambiguous words, because the statute is literally understood, appears to lead to unwise consequences, or to contravene a sound public policy."

In the case of *Blake v. State*, 59 So. 623, the Supreme Court of Alabama said:

"Where the language of a statute is plain and unequivocal, and its application definite and certain, courts will not search for unexpressed intentions, nor indulge in speculations as to the possible or probable qualification that might have been in the mind of the Legislature."

It is my opinion that it was the expressed intention of the Legislature to give the Alabama State Bar Association ten dollars out of each license collected under Schedule 10 of the 1935 Act.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 2, 1935

Hon. Will O. Walton,
Senator, Ninth District,
LaFayette, Alabama.

Licenses:

1. The taking out of license under paragraph B of Schedule 104 authorizes the peddling only of medicine or other articles of like character.

2. A person using a motor vehicle is in addition to the license required by Schedule 104, Paragraph B liable for the license levied by Schedule 146.

3. If such medicine peddler sells other articles, and used vehicles other than motor vehicle, he is liable for license levied by Schedule 146.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I shall thank you to give me an official opinion on the following matters:

"1. What annual license do agents of The W. T. Rawleigh Company and the Watkins Company pay the State and County under the new Revenue Bill? In explanation of the above question, I know that subsection (b) under Schedule 104 of the Revenue Bill passed by the recent Legislature intended to cover this particular class of vendors. However, I am informed that the State Tax Commission is ruling that these parties come under the 'Rolling Store Schedule.'

"I shall thank you to let me have this opinion at your earliest convenience, as there are many people inquiring of me concerning this particular matter."

In reply, I advise sub-paragraph B of Schedule 104 to which you refer provides:

"(b) Each itinerant vendor or peddler of medicine or other articles of like character shall pay an annual license of fifty dollars (\$50.00) to the State and Fifty Dollars (\$50.00) to each county in which they do business. Provided that the payment of the license under this Schedule shows no authority for engaging in any business for which a higher license is in this Act required without the payment of a higher license. (Emphasis ours.)"

Schedule 146 provides in part as follows:

"Schedule 146. Each person traveling on an animal or using a vehicle other than a motor vehicle, doing business as a transient vendor or peddler as defined in this Schedule, displaying, selling or offering to sell any goods, wares or merchandise, other than to a merchant for resale, shall pay a privilege license to the State of Fifteen Dollars (\$15.00) and Five Dollars (\$5.00) for the county in each county in which such transient vendor or peddler does business for each vehicle. Each person using a motor vehicle, doing business as a transient vendor or peddler as defined in this schedule **displaying, selling or offering to sell any goods, wares or merchandise of whatever nature, at retail** shall pay to the State in order to engage in such business the following privilege licenses: Then follows the graduated scale on those using motor vehicles.

It will be seen that the language "goods, wares or merchandise of whatever nature" embraces those things included within Schedule 104, sub-paragraph B. This accompanied by the declaration contained in said paragraph B, that the payment of the license thereunder does not authorize engaging in any business for which a higher license is required seems to me to be definite indication of legislative intent, and if one be a transient peddler using a motor vehicle, he is liable for the license levied by Schedule 146. If such transient peddler or vendor also sells medicines he is liable for the additional license levied by Schedule 104.

If such person travels on foot, he is not liable for any license under Schedule 146, but if he is a peddler of medicine he would be liable under Schedule 104.

If such peddler uses a vehicle other than a motor vehicle, he would be liable for only the peddlers of medicine license, if his business is restricted to medicine "or other articles of like character"—the latter phrase being clearly used in a ejusdem generis sense, and he would not be due an additional license.

However, if he sells articles other than medicine or other articles of like character, he would be liable for the license levied by Schedule 146 on transient peddlers using a vehicle other than a motor vehicle.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1935

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Opinion of November 22, 1935 holding License Inspector entitled to penalty of 15% of licenses payable to Probate Judges held to be a general ruling for the guidance of all Probate Judges.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I have just seen an opinion written by you, dated November 22, 1935, addressed to Hon. Henry Long, President of the State Tax Commission, the heading of which is "License Inspectors held entitled to penalty of 15% of license payable to the Probate Judges in cases of delinquency." The last paragraph of this opinion states "I therefore hold that the penalty of 15% collected by the Probate Judge in cases of delinquency is payable to the License Inspector."

"Please advise me whether the Probate Judge shall pay directly to the License Inspector this penalty, or does it go through the State authorities?"

"I will thank you very much to give me an answer to this question at your very earliest convenience, so that I may govern myself in making up and paying over the money directly from this source, on or before the first of December 1935."

In reply I beg to enclose copy of opinion to Hon. Henry S. Long, dated November 22, 1935, to which you referred.

As you will note the next to the last paragraph of this opinion makes this statement.

"I therefore hold that the penalty of 15% collected by the Probate Judge in cases of delinquency is payable to the License Inspector."

This is a specific holding that you and the other Judges of Probate are authorized to pay to the License Inspector such penalty, and was intended to apply to them as fully as if directly addressed to them.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935

Hon. Frank M. Johnson,
Judge of Probate,
Winston County,
Double Springs, Ala.

Licenses:

No authority to issue license to a rolling store to sell tobacco products.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"In Schedule 32 of the Revenue Bill there is no provision made directly for the amount to be charged rolling stores for privilege to sell tobacco products. But in a booklet compiled by Harry Simon, Chief Clerk, License Department, State Tax Commission, and in his letter of October 8th to all probate judges, he asks that we charge a state license of \$15.00, county license of \$7.50 and fee of 50 cents, for that privilege.

"A Mr. Mohan, of Haleyville, Alabama, who has a license to operate a rolling store in this county, came to the office yesterday and offered me \$3.50 for the privilege to sell tobacco products. I told him I could not issue a license for that amount, as I had had instruction from the State Tax Commission to charge the \$23.00.

"Will you please give me your opinion as to the amount of license to charge him? Mr. Simon has his own rule to charge \$23.00 and the Bill as passed calls for only \$3.50 for retail dealers in tobacco products in this county. It seems to me that Mr. Mohan can not be made to pay the \$23.00 license but what am I to do about it?"

In reply, I beg to advise that in my opinion there is no authority for issuing a license to sell tobacco to a rolling store. Section 350 of the Revenue Act of 1935 provides in part that the license shall be issued which "shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same if such location shall be in a city or town and have a street number. * * * and such license shall not be transferable except as otherwise provided herein, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein."

There is a provision next following, providing for the transfer of a license from one location to another. It is clear I think, that proviso con-

templates the issuance of a license for a fixed place of business. A rolling store necessarily has no fixed place of business and the license would therefore, not be issuable to authorize it to sell one of the products for which a special license is required and which is required to be sold at a fixed location.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935

Hon. Edgar Underwood,
Judge of Probate,
Russellville, Alabama.

Candidates for Solicitor must have met requirements of State Bar and be admitted to practice law in order to be eligible for election.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your request for opinion of November 5, 1935 as follows:

"Please render my an opinion on the following: A young man in this County contemplates being a candidate for Solicitor Law and Equity Court of this County in the election next year. He will not finish his law course at the University until next May. Will he be eligible to have his name on the ballot, or hold the office should he be elected?"

In reply, I wish to refer you to Section 167 of the Constitution of Alabama of 1901, which reads as follows:

"Sec. 167. A solicitor for each judicial circuit or other territorial subdivision prescribed by the legislature, shall be elected by the qualified electors of those counties in such circuit or other territorial subdivision in which such solicitor prosecutes criminal cases, and such solicitor shall be learned in the law, and shall at the time of his election and during his continuance in office, reside in a county (in the circuit) in which he prosecutes criminal cases, or other territorial subdivisions for which he is selected, and his term of office shall be for four years, and he shall receive no other compensation than a salary, to be prescribed by law, which shall not be increased during the term for which he was elected; provided, that this article shall not operate to abridge the term of any solicitor now in office; and provided further, that the solicitors elected in the year nineteen hundred and four shall hold office for six years, and until their successors are elected and qualified; and, provided further, that the legislature may provide by law for the appointment by the governor or the election by the qualified electors of a county of a solicitor for any county."

You will observe that this section sets out the qualifications of a solicitor in part as being one "learned in the law."

This, in my judgment, should be interpreted to mean that at the time a candidate qualified for the place of Solicitor, he must have met the requirements of the law relative to admission to the bar of Alabama and must have been admitted to practice the legal profession.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Ala.

Under House Bill No. 1048—McDermott, approved Sept. 13, 1935, the Probate Judge should deduct the commission allowed the Land Agent as authorized in said Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 10th in which you state:

"An act of the Legislature No. 440 and No. 1048—McDermott, authorizing the Governor to appoint a Land Commissioner and pay him a commission of 10% of such rent, sale or redemption was passed at the last session of the Legislature. Under date of October 10, 1935, we are notified by Henry S. Long, State Land Commissioner, of the appointment of such agent in compliance with this bill. The question that we are asking you to clear up, is, 'Does this office deduct the 10% and pay the same direct to the agent?' If so, what redemptions does the agent receive 10% on? Does he receive this 10% on all redemptions made by this office from the date of his appointment, on October 9, 1935, including sales made in August and September of 1935, and bought in by the State?"

In reply I beg to advise that Sections 1 and 2 of the Act referred to by you provide:

"Section 1. The State Land Commissioner, with the approval of the Governor, may contract with some person or firm in each county of this State to investigate sales of real property for terms and bid in for the State, to notify parties at interest in such real estate of such sales, to secure redemptions of said property, to secure sale at private sale by the State.

"Section 2. For such services rendered under the preceding section, the State Land Commissioner may allow fair compensation, to be fixed in the contract, which shall not exceed 10% of the proceeds of such rent,

sale or redemption, and shall be paid from the funds so received."

The statute is silent as to how the compensation shall be paid, but it does provide that it shall be paid from the funds so received. As a Judge of Probate receives moneys paid in on redemption, presumably he should pay the Land Agent the commission before remitting.

The land Agent is entitled to his commissions only in those cases where he investigates the sale, notifies the parties and secures the redemption.

I presume that he will file sufficient evidence in each case for you to determine whether such redemption was brought about through his efforts.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1935

Hon. B. B. Boisclair,
Bibb County Farm Bureau,
Centerville, Alabama.

Counties—cannot appropriate gasoline tax funds in aid of Farm Demonstration Extension Service.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 19, 1935, which reads in part as follows:

"The Bibb County Farm Bureau is desirous of assisting The County Board of Revenue in taking advantage of the Extension Service 'Four-way Plan.'

"The situation which confronts the County Board is as follows:

"The County funds are budgeted according to the estimated receipts of the County. Included in this budget is the sum of \$1200.00 for County Agency Work.

"The 'Four-Way Plan', as you doubtless know, calls for a County donation of \$2000.00. Would it be legal and permissible for the County Board to transfer this \$1200.00 plus \$200.00 from each of the four districts' gasoline fund, to the fund needed to secure the Extension Service grant?

I am of the opinion that your inquiry should be answered in the negative.

The use of the county's share of the gasoline tax received from the State is now governed by Schedules 156.9 and 156.11 of the Revenue Act of 1935.—

Opinion of the Attorney General to Representative of Choctaw County on November 19, 1935; Opinion of the Attorney General to the Judge of Probate of Winston County on October 3, 1935.

Schedule 156.9 of the Revenue Act of 1935, imposes a two cents tax, one cent of which is equally divided among the sixty-seven counties of the State. The use of the proceeds of the one cent tax by the county is as follows:

"Such funds when received by the County Treasurer shall be covered into the county road and bridge fund, and shall be expended exclusively in the construction, maintenance and repair of the public roads and bridges in such county." (*Italics supplied*).

Schedule 156.11 provides for the use of the one cent tax distributed to the sixty-seven counties in the following manner:

" * * * and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds are to be used in the construction and maintenance of roads in said county, to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama." (*Italics supplied*).

It will be seen from the above that the county's share of the gasoline fund cannot be used for the purpose under consideration.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 4, 1935

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Ala.

License:

1. A party who has purchased a privilege license for operating a cleaning and pressing business, but who has not paid the additional license required for a dyeing business, is required to pay the license provided for the reception or collection of articles for dyeing, when the actual dyeing is done at some place other than at the place where the articles are received or collected.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 24, 1935, which follows:

"Please refer to Schedule 35, page 245, House Bill 324, Revenue Bill of 1935 and give me an opinion as follows:

"A party here has purchased a privilege license for operating a cleaning or pressing business. This party receives clothing and sends it off to be dyed. He does not dye himself. Since he has purchased a privilege license for his cleaning and pressing business, should he then be required to pay a license for the reception or collection of articles to be sent to another place for dyeing."

From the facts stated in your letter, I gather that the party mentioned therein, who is engaged in a cleaning and pressing business, has paid the license provided for engaging in such a business as levied by Schedule 35, Section 348, Chapter 1, Article 13, of the Revenue Act of 1935. It seems that he has not paid the license levied for the purpose of engaging in the business of dyeing. However, you state that he receives or collects articles to be sent to another place for dyeing. Schedule 35, supra, provides, among other things, "that each place maintained or operated for the reception or collection of such articles and not at the location of such pressing, cleaning or dyeing plant paying a license as such shall pay a license of Five Dollars (\$5.00)." Since the party mentioned in your letter has not paid the license provided in Schedule 35, supra, for a dyeing business as such, it is my opinion, therefore, that he should be required to pay a license of \$5.00 for the reception or collection of articles which he sends to another place to be dyed, as provided by Schedule 35, supra.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 4, 1935

Hon. G. H. Howard,
Probate Judge,
Elmore County,
Wetumpka, Alabama.

1. Where a person who was operating a business for which a license was required prior to October 1, and who has paid the license for such year prior to October 1, operates such business after October 1, 1935, and does not take out license therefor prior to November 1, 1935, such person is delinquent and is liable for the penalty of 15% for delinquency, together with interest at 6% from date of delinquency.

2. Where a person not in business prior to October 1, 1935 begins operation of a new business for which a license is required, license therefor must be procured before beginning such business.

3. A person who operated an automobile on the public roads of Alabama prior to October 1, 1935 and who had the proper license therefor and who operates such automobile on the public roads of Alabama subsequent to October 1, 1935, and who does not take out license therefor prior to November 15, such person is subject to the penalty of 15% for delinquency and interest at the rate of 6% from date of delinquency.

4. If such automobile is not operated on public roads of Alabama from October 1 prior to the date, such automobile is actually used on the public roads of Alabama such person is not delinquent and is not subject to the penalty for delinquency.

5. The 6% interest should be apportioned in the same manner the license is apportioned.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of October 23, 1935, in which you request my opinion as follows:

"Section 353 of the Revenue Code provides that where any license is delinquent the same is subject to a penalty of 15% of the amount of the license, together with interest at 6% from the date of delinquency.

"Please advise us if the Probate Judge must be notified by the License Inspector of the delinquency of the license before the 15% penalty is applicable. If not, how are we to determine the date of delinquency?

"To whom shall we pay the 15% penalty?

"Shall we distribute the 6% interest in the same proportion as the license?

"We shall appreciate your opinion as early as is convenient."

In reply to your first question, I advise that if a person is operating a business or occupation for which a license is required prior to October 1, for which proper license had been secured and such person continues the operation of such business or occupation subsequent to October 1, and does not take out license therefor prior to November 1, such person is subject to the 15% penalty for delinquency, together with interest at the rate of 6% per annum from the date of delinquency.

If a person begins a new business subsequent to October 1, he must take out license therefor if such business is one for which license is required before beginning said business.

In the case of using such term in a general sense, if a person operated on the public roads of Alabama an automobile prior to October 1, 1935, and had secured the proper license therefor and operates such automobile subsequent to October 1st and does not take out license therefor prior to November 15, 1935, then such person is subject to the penalty of 15% for delinquency, together with 6% interest from the date of delinquency. If a person does not actually operate an automobile on the public roads of Alabama at any time from October 1st on and actually takes out license before he begins such operation, then he is not delinquent and is not subject to the interest and penalty. See opinion to Henry S. Long, President State Tax Commission of October 30, 1935, a copy of which is hereto attached.

You further inquire if the License Inspector must notify you of such delinquency before you are required to collect the penalty.

Subdivision (c) of Section 353 of the Revenue Act of 1935 reads as follows:

"(c) All licenses levied by this Act except as otherwise provided shall be due and payable as of October first of each year and shall be delinquent November first thereafter. Where any license issuable by the Probate Judge or Commissioner of License shall be delinquent, the same shall be subject to a penalty of 15 per cent of the amount of the license, which penalty must be collected by the Probate Judge or Commissioner of Licenses when the license is taken out together with interest at 6% from the date of delinquency."

Such provision makes the fact of delinquency rather than the report of the License Inspector the criterion for determining the payment of the penalty. As a matter of practical operation. I assume that License Inspectors will continue to report delinquents as in the past. However, the Probate Judge must by proof satisfactory to him determine the question of delinquency vel non. The nature and amount of such proof is necessarily a question for him to decide.

Answering your further question, it is my opinion that the 6% interest should be distributed in the same proportion as the license money is distributed between the State and County.

Answering your further question as to the payment of the 15% penalty, this matter is now under consideration and when an opinion is rendered, the same will be sent to you.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

December 4, 1935

Hon. W. E. Butler,
Judge of Probate,
Madison County,
Huntsville, Ala.

Madison County—Fees of Judge of Probate governed by Section 7285 of the Code of 1923 rather than by Act No. 322, Senate Bill 183 approved February 17, 1885, (Acts 1884-1885, p. 591).

Opinion by Assistant Attorney General Screws.

Dear Sir.

I have your letter of October 22, 1935, in which you request my opinion as to whether or not the fees chargeable by the Judge of Probate of Madison County are governed by Section 7285 of the Code of 1923, or by Act No. 322, Senate Bill 183 approved February 17, 1885 (Acts 1884-1885, p. 591), which provides for the fees of the Judge of Probate of Madison County. In other words, was the Local Act in question repealed by the adoption of the Constitution of 1901 or any subsequent legislation.

It has been held that Section 96 of the Constitution and the Schedule attached to the Constitution following Section 287, does not necessarily repeal Local Acts of this character as the Constitution has a prospective rather than a retrospective application.—**Barnes v State, ex rel. Tate (ms): Opinion of the Attorney General to the State Comptroller on August 7, 1935.**

The question then presents itself as to whether or not the Act in question which regulates the fees of the Judge of Probate of Madison County, Alabama, was repealed by any subsequent legislation.

The rule in this respect is stated in the case of *Shepherd et al. v. Clements*, 224 Ala. 1, 141 So. 255, which is as follows:

"We recognize the rule that the presumption is a general act does not repeal a local statute, but, as has been well said, 'such presumption must give way to a plain manifestation of a different legislative intent.' The question is one of intention which may be made to appear by the subject-matter with which the general act is concerned, by the surrounding circumstances, by other legislation on the same subject, and the purpose to be accomplished. Thus, where the clear general intent of the Legislature is to establish a uniform system throughout the state, the presumption must be that local acts are intended to be repealed—36 Cyc. 1089, 1090."

See also *Isabell v. Shelby County*, 10 Ala. App. 639, 65 South, 706.

In my opinion the Act in question was repealed by Section 3720 of the Code of Alabama of 1907, which provides for the fees of judges of probate in general. In my judgment, the Legislature intended to cover the whole field or subject-matter of the fees allowed to judges of probate, thus repeal-

ing by implication any local law in conflict therewith.—**Shephard et al. v. Clements**, supra. The saving clauses in Act of 1911, p. 154, which amended Section 3720 of the Code of 1907 and Section 7285 of the Code of 1923, which was the adoption of the 1911 Act as carried forward in the 1923 Code, does not alter the above. The saving clauses, "that no local law shall be repealed", contained in the above citations, was not contained in Section 3720 of the 1907 Code. The repeal of the 1885 Act in question as affects Madison County, had already been repealed and could not be revived by the 1911 Act or the 1923 Code section.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Licenses—Licensing authorities unauthorized to license veterinary surgeon unless properly qualified under general law.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of October 17, 1935 in which you request my opinion upon the following:

"Under Schedule 150, page 249, of the Revenue Bill of 1935, may a Judge of Probate issue a license to a person to practice veterinary surgery if that person is not a graduate of a veterinary school and has not been licensed to practice by any Veterinary Board. In other words, the party practicing is just an ordinary layman who has not had the theory but has been practicing the treatment of animals for a number of years."

Section 2 of an Act approved March 17, 1935, General Acts 1915, page 126. provides as follows:

"Section 2. Any person of good moral character, who has practiced veterinary medicine and surgery in the State of Alabama for a period of three years immediately preceding the passage of this Act, and, who shall present to the State Board of Veterinary Medical Examiners satisfactory evidence, thereof, shall be granted a permit to practice veterinary medicine and surgery in Alabama; provided, said person or persons meet the requirements of this Act, and pays his registration fee and annual dues as hereinafter provided. Said person or persons desiring the benefits derived from this section must apply for said permit within six months after the appointment and organization of the said State Board of Veterinary Medical Examiners of Alabama."

I am assuming for the purposes of this opinion that the Veterinary Surgeon in question has not availed himself of the exemption hereinabove set out. Of course, any surgeon exempt under the above quoted section would not come within the scope of this Schedule.

The license required of those persons practicing "veterinary surgery" by Schedule 150 page 309, Revenue Bill of 1935 has nothing to do with the license or permit required by Chapter 3, Article 8, Sections 1249-1265, Code of Alabama 1923.

The above license schedule presupposes the issuance of licenses only to those who are legally entitled to engage in the practice of the profession in question.—Biennial Report of Attorney General 1930-1932, page 328.

In order to legally engage in the practice of veterinary medicine, the provisions of Chapter 3, Article 8, Sections 1249-1265, relative to being a graduate of a recognized veterinary school and the holding of a license or permit from the State Board of Veterinary Medical Examiners, must be complied with.

In an analogous situation involving the issuance of a municipal license to a chiropractor who had failed to obtain certificate of qualification from the State Board of Medical Examiners, as required by law, the Alabama Court of Appeals speaking through Presiding Judge Bricken said:

"In order to so qualify, the person desiring to engage in practicing the system of chiropractics must first obtain a certificate of qualification from the State Board of Medical Examiners (Section 3191, Code of 1923); and, until so qualified, the officers or authorities who have charge of issuing licenses have no authority to require of, or issue to, any person a license to practice the system of chiropractics in this state or any subdivision thereof. Where, in a schedule of licenses established by an ordinance passed by the competent authorities of a city, there is included an occupation which is prohibited by the general laws of the state, such ordinance, in so far as it licenses said unlawful occupation, is null and void. *Hewlett v. Camp*. 115 Ala. 499, 22 So. 137."

Jackson vs. City of Sylacauga, 144 So. 125.

In view of the foregoing, therefore, it is my opinion that license should not issue to a practitioner of veterinary surgery until such party has complied with the requirements set out in Chapter 3, Article 8, Sections 1249-1265 of the Code.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1935

Hon. J. B. Ford, Treasurer,
Tallapoosa County, School Funds,
Alexander City, Alabama.

Schools—Warrants or certificates of indebtedness issued by the County Board of Education are not negotiable instrument.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of November 21, 1935, which reads as follows:

"Before paying certain divided or split warrants or certificates of indebtedness appearing on the calendar pay roll for October 1935, I would like to ask your opinion on same.

"In 1932 Lee S. Moss, a negro teacher, was issued certificate of indebtedness number 3183 for \$80.00 for services rendered during the month of April 1932, according to certified pay roll filed with me, and, in order that he might be better able to trade same, our Board of Education inadvertently issued him certificates of indebtedness numbers 3184-A and 3184-B for \$40.00 each for the same service without taking up the original certificate for \$80.00 or advising me with reference to the division of this particular certificate. For your information the original certificate number 3184 for \$80.00 was presented to and paid by me before I had any knowledge of the split certificates being outstanding. Of course, the payment of both sets of certificates would simply mean paying the teacher twice for the same service, which I question the right to do, however, these split certificates are now held by innocent holders who are demanding payment.

"THE OPINION DESIRED IS: WOULD I BE HELD LIABLE FOR THE PAYMENT OF THESE SPLIT CERTIFICATES EVEN THOUGH NOW ORDERED BY THE BOARD OF EDUCATION TO PAY SAME."

I am of the opinion that your inquiry should be answered in the affirmative. The \$80.00 certificate of indebtedness which was issued for the services rendered has been paid and it would be illegal to pay for said services again.

Warrants or certificates of indebtedness of local school organizations are not negotiable instruments in the sense of the law merchant or negotiable instruments law, so that there can be no innocent holder of such warrants issued contrary to law, and the rules with regard to the presentation of negotiable papers are not applicable.—56 *Corpus Juris*, 565; *Kimmons v. Jefferson County Board of Education, et al.* 204 Ala. 384, 85 So. 774. Any defense against the payment of same is applicable to innocent holders demanding payment.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

December 6, 1935

Hon. E. A. Hammett,
Judge of Probate,
Talladega County,
Talladega, Alabama.

Counties—Temporary loans cannot be renewed or refunded if made after Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act" became effective, viz., October 1, 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 23, 1935, in which you present the following inquiry:

"I would like to have an opinion from you upon the following questions: If Talladega County, during the month of either November or December, of this year, that is, 1935, makes a temporary loan in such amount as is authorized by law, and issues a warrant as evidence of this indebtedness, can the County refund this temporary loan by issuing interest bearing warrants as authorized by Section 6782 of the Code of 1923?"

I am of the opinion that your inquiry should be answered in the negative.

Temporary loans of a county are now governed by the following sections of the Code of Alabama of 1923; 6776, 6777 (as amended by Acts 1931, p. 639), 6778, 6779 (as amended by Acts, 1927, p. 753), 6780 and 6781, all as qualified by Section 11 of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act."

Section 11 of the County Financial Control Act, supra, provides as follows:

"Section 11. TEMPORARY LOANS. Nothing in this Act shall be construed to repeal the general laws of the State of Alabama authorizing counties to make temporary loans in anticipation of collection of taxes; provided, however, that hereafter no temporary loan or loans in anticipation of the collection of taxes made for the purpose of enabling counties to meet their current obligations shall exceed 95 per cent of the amount of such temporary loans made during the preceding fiscal year, except that to meet emergencies provided for in Section 17 hereof, temporary loans in anticipation of collection of taxes may be made up to the full amount provided for under the general laws of the State of Alabama; and in making up the budget provided for under this Act the amount borrowed on temporary loans in anticipation of the collection of taxes to be made during each fiscal year shall be included as a part of the operating revenue of the county for such year; and the amount of such temporary loan, principal and interest, payable in each fiscal year, shall

constitute a part of the current operating expenses to be included in the budget of the county for the fiscal year in which such loans are payable, and shall be paid out of the funds pledged therefor."

Section 6779 provides as follows:

"That Section 6779 of the Code of Alabama be amended so as to read as follows: Section 6779: 'Warrants issued under the provisions hereof shall bear interest at a rate not exceeding eight per cent per annum; shall not be for a greater sum than one half the income of said County for the preceding year and shall mature not later than February first of the year following and shall not be renewed.'

Approved September 6, 1927."

It will be noted that Section 6779, *supra*, specifically provides that warrants issued for temporary loans shall not be renewed. Section 11 of the County Financial Control Act provides that in making up the budget for a fiscal year the amount due on temporary loans should be included therein.

Section 6782, Code of 1923, to which you refer, has reference to refunding outstanding indebtedness evidenced by valid warrants. The specific provisions of Section 6779, in my opinion control over the general provisions of this section. Moreover, this section is now superceded by the provisions of the County Financial Control Act, *supra*. The only provision for refunding temporary loans under said Act is that part of Section 9, which provides as follows:

" * * * With the consent of the holders thereof, any county may refund, under the provisions of this Act, temporary loans outstanding when this Act goes into effect made in anticipation of the collection of taxes for the time and under, the conditions and terms provided herein for the refunding of outstanding warrants."

It will be noted that the temporary loans must have been outstanding at the time said Act went into effect. The above quoted proviso would have no bearing on temporary loans made thereafter. This also shows a legislative intent that no temporary loans shall be renewed or refunded if made after the effective date of said Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 9, 1935

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Bailiffs—not entitled to payment for meals and lodging when kept with jury.

Attorney General's opinion not affected generally by declaratory judgment opinion of Circuit Court.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 20, 1935, which reads as follows:

"I am in receipt of a letter from Mr. S. P. Singleton, Assistant Examiner of Accounts, inclosing a copy of a Declaratory Judgment rendered by Hon. J. Fritz Thompson, Presiding Judge, Tenth Judicial Circuit. In this decision Judge Thompson holds that bailiff is entitled to meals and lodgings when kept with a jury by direction of a court and that the costs of same are a lawful charge against Jefferson County.

"Since the Declaratory Judgment is in conflict with your opinion rendered on December 13, 1933, page 449, Biennial Report of 1932-1934, I herewith respectfully request that you review said opinion in order to clarify the existing situation."

After a due consideration of the opinion of this office found in Biennial Report 1932-1934, p. 449, and the declaratory judgment opinion of the Circuit Court of Jefferson County, I am of the opinion that the opinion of this office is correct.

Regarding the protection of public officers on their official bonds, I am of the opinion that opinions of the Attorney General control over declaratory judgment opinions of the Circuit Courts in general.

Section 869 of the Code of 1923, provides as follows:

"869. Written opinion of attorney-general protects officer.—The written opinion of the attorney-general secured by either a state or a county officer legally entitled to secure opinion, shall protect such officer to whom it is directed from liability to either the state, county or other municipal sub-division of the state, because of any official act or acts performed as directed or advised in such opinion."

The only limitation on said section in Section 10291, Code of 1923, which provides as follows:

"10291. Opinion of supreme court protective.—The opinion of the justices of the supreme court or a majority of them shall be a protection to the officers and departments of the state, acting in accordance therewith, in the same manner and to the same extent as opinions of the attorney general of the state, and in the event of a conflict between the opinions of the attorney general and the opinion of the justices of the supreme court rendered in accordance with this Article 7 of the code, the opinion of the justices of the supreme court shall take precedence and prevail. All opinions of the justices of the supreme court heretofore rendered in accordance with this article shall have the protective force and effect provided for herein."

It will be seen from the above that the opinions of the Attorney General will protect public officers subject only to the limitation that opinions of the Justices of the Supreme Court which are in conflict control. Of course, an adjudicated case in the Circuit Court will control in each particular case but does not affect the opinions of the Attorney General generally.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 9, 1935

Hon. J. A. Keller,
State Superintendent of Education,
Capitol.

Schools—Warrants issued against three mill tax preferred claim against and upon proceeds of levy.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 27, 1935, which is as follows:

"Superintendent E. E. Owne of Tallapoosa County has requested me to refer the following question to your office for an opinion:

"Sections 283-286 of the Alabama School Code of 1927 with amendments thereto provide that any warrants which are issued against the proceeds of the three mill tax constitute a preferred claim against the proceeds of that tax.

"Can the board of education use any proceeds of the three mill tax which may be available early in the year to pay salaries of teachers or to meet other necessary expenses, provided a sufficient amount of the anticipated proceeds based on taxes to be collected is left to meet the payment of principal and interest on warrants coming due later in the year, or must a sufficient amount of the proceeds of the three mill tax to meet the payments of warrants coming due during the year first be set aside before any other payments are made from the proceeds of this tax?

In answer to your inquiry, I am of the opinion that the first proceeds of the three mill tax may be used to pay other legal expenditures therefrom provided that there will be sufficient amount on hand to pay warrants issued against said tax when same becomes due.

Section 283 and 284 of the School Code of 1927, provide that warrants issued against the three mill tax shall be a preferred claim upon the proceeds of the levy. It is further provided that a sufficient sum be set aside **each year** to meet said payments. In my opinion, the requirement of the statute is met if a sufficient sum be set aside by the time the warrants become due. The first proceeds from the levy need not necessarily be set aside.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 11, 1935

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Board of Revenue—may make appropriation for erection of
County Library building.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of November 16, 1935, in which you request my opinion as follows:

"The Board of Revenue has been requested to make an appropriation for the erection of a County Library.

"Please advise if the Board can legally make this appropriation."

In my opinion your inquiry should be answered in the affirmative.

Section 1545, Code 1923, as amended by General Acts 1927, page 69, provides for the establishment etc. of free public libraries in the various counties of the State by the governing body of such County, and gives to such governing body the power to "make appropriations from the County Treasury in support thereof in such sums as they may deem proper, not to exceed \$5000 annually, except that Counties of 150,000 inhabitants may appropriate annually a sum not to exceed \$20,000.00." Section 1546 vests the government and supervision of such libraries in a **county library board**, consisting of the probate judge, as Chairman, and the County Superintendent of Education, both ex-officio, and three others to be elected by these authorities. Section 1547, as amended by General Acts 1927, page 69, Section 2, sets forth the powers and duties of the library board, in the following terms:

"The library board so created shall have full power and authority to control the expenditures of all funds received or appropriated for such libraries; to erect or rent buildings to cost not in excess of the funds

available to them; to purchase books and equipment, to provide a system of circulating or traveling libraries; to elect a librarian and other employees, and otherwise to have full authority and power to manage and control the said library in order to carry out the full intent and purpose of this article; and a careful and complete record and set of books shall be kept by the library board, showing the proceedings of their several meetings and the disbursement in detail of all funds expended by them. In counties where, in the city having the largest population, a free public library is already established and in operation, a separate county library board shall not be appointed, but the county libraries and the appropriations authorized shall be administered by the governing board of such free public library on such terms as may be agreed upon between the above named county authorities and the said governing board."

It will be seen from the foregoing that the Board of Revenue, or other county governing body, is given the specific authority to make appropriation as may be necessary for the establishment of a county library. This authority is distinctly within the province of such governing body. But there its authority ceases, for the expenditure of such funds as are appropriated shall be under the supervision of the Library Board, as provided by Section 1547, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 13, 1935

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Ala.

License—

A person selling fruit from a truck which remains at one fixed place during the entire time fruit is offered for sale is liable for a fruit stand license as levied by Schedule 66. Section 348, Chapter I, Article XIII of the Revenue Act of 1935.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 18, 1935, which follows:

"Will you please advise me whether or not in the statement of facts as set out below that there would be due a transient dealer's license un-

der Schedule 147 or Fruit Stand license under Schedule 66 of the Revenue Code of 1935?

"A person owns his own truck and goes to Birmingham and purchases a truck load of apples and brings them to Chilton County and parks his truck at the same place or approximately in the same place in the street adjoining the Court House property and from his truck sells apples at retail. This party does not deliver any apples and does not peddle any apples, except as above stated and all parties who desire to purchase apples from him must come to his truck and buy from the truck. This truck is parked about eight o'clock in the morning and stands in the same place until about six o'clock at night and then the truck, with whatever apples might be remaining, is carried to the party's home and the next morning the truck is again parked at the same place or as near the same place as possible for the trade the next day. This party does not sell apples in any other town in the county or at any other place in the county, except the one place as indicated above and makes no deliveries, but sells only from the truck.

"Will you please advise me whether or not this party is due a transient dealer's license or a fruit stand license or what other license he might be due under the Revenue Code?"

In answer to your inquiry, I call your attention to Schedule 66, Section 348, Chapter I, Article XIII of the Revenue Acts of 1935, which is as follows:

"For each person selling fruit from a fruit stand, store or other established place or business, in cities or towns of over ten thousand (10,000) inhabitants, ten dollars; (\$10.00) and in all other places whether incorporated or not five dollars (\$5.00). Provided this section shall not apply to regular merchants carrying fruit as a part of their stock of merchandise but who do not display same in front of their place of business, and whose ad valorem assessment on his stock of merchandise at the place where such fruit is sold is in excess of one hundred dollars."

In your letter you state that the fruit dealer described therein parks his truck at the same place, or approximately the same place in the street every day, and from the truck sells apples at retail, not moving the truck at any time during the period in which he is offering the apples for sale.

It is my opinion that under a reasonable construction of the term "fruitstand," as used in Schedule 66, supra, the party described in your letter under the exact facts outlined by you, is operating a fruitstand and is liable for the license levied for such operation by Schedule 66 supra.

A peddler of fruit is specifically exempted from the payment of license levied by Schedule 146, Section 348, Chapter 1, Article XIII of the Revenue Act of 1935 and the license levied by Schedule 147, Section 348, Chapter 1, Article XIII of the Revenue Act of 1935, applies to transient vendors or dealers who sell to retailers for resale, and not to persons who sell at retail as the party described in your letter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 13, 1935

Hon. Ab Crow, Sheriff,
St. Clair County,
Ashville, Alabama.

Attention Pat Cornett

Counties—Liable for electricity for electric refrigerator operated in County Jail.

Counties—Liable for purchase of cook stove and utensils used in cooking food, but not fuel used.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 11, 1935, in which you request my opinion as to whether the county is liable for the payment of the following items used in feeding prisoners at the St. Clair County Jail at Pell City, Alabama.

"First. The use of electricity for electric refrigerator for preserving and caring for prisoners' food and ice when necessary.

"Second. For fuel, kindling, wood and coal in preparing and serving food to prisoners.

"Third. For payment of stove and cooking utensils for preparing and serving food for prisoners."

Your first inquiry should be answered in the affirmative. This office in the following opinions has held that a county is liable for the purchase of an electric refrigerator used for prisoners in the county jail.

Opinions to:

Hon. C. E. Corprew, Sheriff, Tallapoosa County, Dadeville, Alabama,
May 20, 1935.

Hon. N. P. Tompkins, Judge of Probate, Tuscumbia, Colbert County,
Alabama, July 11, 1935.

The authority to purchase an electric refrigerator, of a necessity, carries with it the corresponding right to pay for the electric power which is a prerequisite to its proper operation.

It is to be noted in this connection that the above cited opinions were based on the recent case of Holcombe v. Mobile Co. 155 So. 640. In that case

we find the following which restricts the liability of the county for such electricity to refrigerators operated in the jail.

Your second and third inquiries have been heretofore answered by opinion of this office of April 15, 1935 to Hon. F. B. Thompson, Judge of Probate, Clay County, Ashland, Alabama. I enclose herewith copy of this opinion for your convenience.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 16, 1935

Hon. R. E. Adams,
Judge of Probate,
Escambia County,
Brewton, Alabama.

Poll tax—exemption from.

A person who served in the Student Army Training Corps of the University of Alabama between April 1, 1917 and November 11, 1918, and holds an honorable discharge from the United States Army is exempted from the payment of poll tax.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 9, 1935, which follows:

"Please inform me if a person who served in the Student Air Training Corps of the University of Alabama, between April 1, 1917 and November 11, 1918, is exempt from the payment of poll tax, if honorably discharged therefrom."

The answer to your question must be in the affirmative. I call your attention to Section 194½ of the Constitution of Alabama which reads:

"No person who honorably served in the military or naval service of the United States between January 1, 1917 and November 11, 1918, shall be required to pay the poll tax mentioned in the Constitution of Alabama; such person shall be exempt from the payment of all poll taxes which have accrued or which may hereafter accrue. This section shall be self executing and retroactive. The Judge of Probate shall issue certificates of exemption from the payment of such poll taxes to the persons entitled thereto, under such rules and regulations as may be prescribed by the Governor."

Speaking generally of Section 194½ of the Constitution, this office held:

"It is clear that all persons falling within the terms of the above Section of the Constitution are exempt from all poll taxes which have accrued or may hereafter accrue for the reason that the law, by its own provision, is self executing and retroactive."

Biennial Report of Attorney General 1928-30, p. 103.

As to whether or not a person who served in the Student Army Training Corps of the University of Alabama between April 1, 1917 and November 11, 1918, is exempt from the payment of poll tax if honorably discharged therefrom. This office has held:

"Section 194½, poll tax amendment to the Constitution of Alabama, exempts those 'who honorably served in the military or naval service of the United States between January 1, 1917, and November 11, 1918,' etc.

"Whether or not the applicant for poll tax exemption certificate is entitled to same depends upon whether or not he was **in the United States army or naval service** between above said dates, and was honorably discharged therefrom. This is a question of fact to be determined by you in each case upon the evidence by the applicant.

"The student army training corps were part of the United States army, being established under statutory authority. The question is as to the character of enlistment. All regularly enlisted members of the students army training corps were in the army and were given army discharges.

"If the party in question was a member of the said S. A. T. C. between above said dates, and hold an honorable discharge from the United States army, he is entitled to his certificate of exemption from poll tax."

Biennial Report of Attorney General 1924-26, p. 72.

If the applicant in question cannot produce sufficient evidence for you to determine his status or the character of his enlistment, I would suggest that you communicate with the Adjutant General of Alabama, General John C. Coleman, who has a record of the soldiers who went from Alabama, alphabetically arranged, and who will be glad to give you the date in any particular case.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 16, 1935

Hon. Cecil Deason, Solicitor,
Jefferson County Court of Misdemeanors,
Birmingham, Alabama.

Witnesses—License Inspectors—

License Inspector or his Deputy appearing as a witness in a prosecution for violation of the Revenue Laws begun by him is entitled to his attendance as such witness when subpoenaed as such and who appears and proves his attendance.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 21, 1935, in which you state:

"In Section 2 of House Bill 118, providing for the License Inspector in all counties in the State of Alabama having more than one hundred and fifty thousand population, provides that the fees, charges and costs, authorized by law to be collected by the License Inspector, shall after the deduction of a salary of Three Hundred Dollars per month and also the salaries of the clerical help and all deputy License Inspectors, that all other fees, charges and costs shall be paid into the state and county treasury, one-third going into the county treasury and two-thirds going into the state treasury.

"In your opinion, I would like to know if the witnesses' fees collected by our clerk for the attendance of License Inspectors who appear in our court as witnesses whether or not this witness fee should be turned into the state and county treasury or whether or not the license inspector who makes the case is entitled to this fee."

In reply, I beg to advise that in an opinion found in the Biennial Report 1930-32, page 170, it was held that when sheriffs were subpoenaed as witnesses in a case they were entitled to their attendance as such. This opinion was reaffirmed in an opinion to Howard Kirby, Clerk of the Circuit Court of Etowah County, under date of July 12, 1933, a copy of which I attach.

It appears to me that the License Inspector, being in effect an officer not dissimilar to the Sheriff for the enforcement of the Revenue Laws, that the same reasoning would apply and that if a Sheriff may prove and get his attendance as a witness that a License Inspector under like conditions would be entitled to his attendance upon being subpoenaed and proving his attendance as a witness in any particular case.

I am of the opinion that the "fees, charges and costs authorized by law to be collected by the License Inspector" as used in the Todd Act refer primarily to those fees, charges and costs which go to the License Inspector by virtue of his office as License Inspector and usually are understood to be the

\$1.50 citation fee and the 15% penalty in cases of delinquency. I do not think that they refer to amounts payable to an individual as witness fees, even though such individual may happen to be a License Inspector or Deputy License Inspector.

Upon the authority of the foregoing opinions holding the Sheriff is entitled to his attendance as a witness, I am of the opinion that the License Inspector or his Deputy subpoenaed and appearing as a witness in a case and who proves his attendance is entitled to such attendance as a witness and that such witness fee should not be paid into the State and County Treasury but should be paid to such witness.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 17, 1935

Mrs. Jessie W. Nunnelee,
Chairman, Board of Registrars,
Montgomery County,
Montgomery, Alabama.

Elections—Poll list should be purged of those registered before reaching twenty-one years of age regardless of date of said registration. Poll list not invalidated because it contains names of some not legally registered.

Opinion by the Attorney General.

Dear Madam:

I have your letter of December 9, 1935, which reads as follows:

“Referring to your opinion of September 12, 1935 to Judge of Probate, W. W. Hill of Montgomery County, declaring all registered voters, who registered under rulings of former Attorney General before they were actually 21 years of age were illegally registered.

“Please advise me how far back your ruling covers, so that I may know where to start purging the list of such voters. Also advise me as to whether or not the list of voters is illegal until the purging has been completed.”

In answer to your first inquiry, I am of the opinion that all persons who registered before reaching the age of twenty-one years were not legally registered and should be stricken from the poll list regardless of the date of said registration.

The former opinions of this office dealing with the age requirements for registration were based on constitutional provisions. (Constitution of 1901,

Sections 177, 178 and 181.) See opinions to Judge of Probate, Montgomery County, on September 12, 1935 and February 18, 1935; **Biennial Report of Attorney General, 1928-1930**, pp. 649 and 672; **Biennial Report of Attorney General, 1922-1924**, p. 299. Said opinions held that under the requirements of the Constitution one must be twenty-one years of age at the time of registration in order to be eligible for registration. The opinion to the Judge of Probate of Montgomery County on September 1, 1935, held that those who were registered before reaching twenty-one years of age should be stricken from the poll list in the manner provided by law.

An Act of 1915, providing for the registration of voters, expressly provided for the registration of persons who would become twenty-one years of age before the registrar will convene again and before another election in the county. ((Verbiage of act). (Acts 1915, p. 239, Section 22). This Act was repealed by Acts 1920, p. 124, which repealing act made no provision for the registration of minors. I am of the opinion that this Act was repealed because of its unconstitutionality.—**Biennial Report of Attorney General, 1928-1930**, p. 649; **Biennial Report of Attorney General, 1922-1924**, p. 299.

Since the age qualification for registration is governed by the Constitution, statutory enactments in conflict therewith are of not force and effect. The 1915 Act, supra, being unconstitutional, has no bearing on the question involved.

The premises considered, I am of the opinion that all those persons who were registered before reaching the age of twenty-one were not legally registered and should be stricken from the poll list in the manner required by law. This is true regardless of the date of said registration. In other words, there is no time limit involved and the opinion referred to in your letter is applicable to all cases.

I am of the opinion that your second inquiry should be answered in the negative. The mere fact that the poll list contains the names of some who are not legally registered does not invalidate the whole list.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 19, 1935

Hon. John Brandon,
State Treasurer,
Capitol.

Checks made payable to the State Treasurer for the payment of taxes must be paid at face value by the paying bank.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 14th in which you state:

"Please advise if checks made payable to State Treasurer for the payment of taxes must be paid at face value by paying bank."

In reply, I beg to advise that your inquiry involves the determination of two questions: Taxes which are payable directly through State Agencies such as The Tax Commission, and those which are collected by the Probate Judge or the Tax Collector and are remitted by him at the time of making his monthly or other reports.

As to the first inquiry, I think this is fully answered by the case of *City of Enterprise vs. Rawls*, 86 So. Rep. page 374 in which it was said:

"Taxes are not debts. They do not result from contractual obligations; they are contributions required for the support of the government. Unless qualified in the text, the term 'taxes' or 'tax' is used in the same sense of money—an exaction to be alone discharge in money."

This case was cited and quoted approvingly in an opinion found in Biennial Report of the Attorney General 1930-1932, page 194, and likewise in an opinion found in the same Biennial Report at page 850. Section 100 of the constitution provides that no obligation or liability held or owned by the State or by any county or municipality shall ever be remitted, released, postponed or in any way diminished by the legislature. As the deduction of an exchange charge would amount to a diminution of the taxes due to the State, I doubt if even legislative authority would authorize such action. However, there is no act of the Legislature authorizing the deduction by the Bank of such an amount, and if any check should be accepted, having such deduction, the amount of taxes due would not be satisfied pro tante.

The second question involved in your inquiry is more difficult. Presumably the full amount of taxes due have been paid the tax collector, probate judge or other collecting officer and the question arises: Is there any authority for allowing the bank to deduct an exchange charge on checks given by such tax collector or probate judge in making his remittance to the State? It seems to me that the case of *Enterprise vs. Rawls* would still apply and that the payment of money means the actual payment of the amount due into the State Treasury.

However this may be, the prior act, Section 3085 of the Code, provides that the tax collector must pay to the State Treasurer "all State taxes then due from him to the State", and a similar provision as to the county. The same provision amplified is to be found in Section 192 of the 1935 Revenue Act, which provides that the tax collector must pay to the State Treasurer "all State taxes, interest and/or penalties then due from him to the State", and a similar provision as to the amount due the counties and schools. The probate judges are required by Section 373 of the Revenue Act of 1919 to remit "within five days after the end of each month to the State Treasurer at the expense of the State all money received by him for licenses belonging to

the State, etc." The same provision is found in Section 365 of the Revenue Act of 1935 except that the five-day provision is changed to ten days. It is to be noted that all of these provisions provide for the remitting of **all taxes or all monies** received for licenses. Taking the language as given, it requires that there be paid into the State Treasury the entire amount due except the commissions which are allowed by law.

It is true that in the Probate Judges' provision there is the line stating "at the expense of the State" and likewise as to the Tax Collector, we have Section 3053 of the Code of 1923 providing that he (the Tax Collector) "shall also be allowed the actual costs of remitting all collections to the State Treasurer, the same to be paid out of the treasury or to be credited to the collector upon his making his annual settlement with the State Auditor." This provision is repeated as Section 163 of the Revenue Act of 1935. It does not seem, in view of the fact that these officers must remit all the taxes and **all the money** received for licenses and as taxes are payable in money, that there can be any authority for the payment of a part of the taxes or a part of the money received for licenses to a bank or other remitting agency. The effect of this would be to reduce the amount of taxes which the State receives. While the terms "at the expense of the State" or "the costs of remitting" might seem to authorize the payment of such a charge, it is my judgment that the same was not contemplated but that if those terms are to be given their proper meaning, they are to be given a strict construction and apply to the actual expense or costs of remitting including perhaps postage or some such nominal expense. I, therefore, hold that there is no authority, in the absence of a statute, for a bank to make a charge against a check given in payment of taxes, but that the same must be paid in full.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 23, 1935

Hon. Solomon Baxter,
County Superintendent of Education,
Houston County,
Dothan, Alabama.

Schools—Notice of three mill tax election containing proviso limiting use of tax to specific public school purposes does not invalidate election although ballot contains no such limitation, and further does not, under facts stated, limit expenditure of the proceeds of the tax.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of December 10, 1935, together with other data. from which appear:

"In 1917 Houston County held a special election for the purpose of voting a three mill tax for public school purposes within the county for

the years 1917-1918 to 1936-1937, inclusive. The petition for the election requested an election to be held to determine whether or not the County should vote a three mill tax for **public school purposes within the County**. Notice was published and the election duly held and the tax voted. However, there was a variance between the published notice of the election and the ballot used. Both provided that the tax levied was for **public school purposes within the county**. However, the notice contained the following additional proviso that was not included in the ballot: 'Said tax to be applied to the reduction of incidental fees and supplements, the employment of additional teachers where needed, and the extension of inadequate terms of the schools of the county.'

In view of the above you request my opinion as follows:

(1) Would the variance above referred to invalidate the election?

(2) If not, could the proceeds of the tax legally be pledged to the payment of the principal and interest on warrants issued by the County Board of Education for the purpose of financing the construction and equipment of school buildings within the county?

I am of the opinion (1) that the election is valid, and (2) that the proceeds of the tax may be used "for public school purposes".

Since the holding of the election referred to, the Legislature has passed a validating act (Acts of 1931, page 97) which has been considered in the case of *Johnson v. Rice*, 227 Ala. 119, 148, So. 802, and another validating act (General Acts 1935, approved January 24, 1935) which has been construed in the case of *Harmon et al. v. County Board of Education et al*, 160 So. 687. I believe that under the authority of these Acts, as interpreted in these cases, the tax election in this case is valid.

The tax election being valid the question is then presented as to whether the expenditure of the funds is restricted by the words added by the Probate Judge. I am of the opinion that it is not so limited.

The question of notice affects the validity of the tax election, (*Shanks v. Winkler*, 210 Ala. 101, 97 So. 142) rather than the method of expenditure. This election was held under authority of a section of the constitution (Amendment 3—Article XIX, Constitution of Alabama) which provides for the holding of elections to levy taxes "for public school purposes". This section further provides "that the rate of such tax, the time it is to continue and the purpose thereof" is to be submitted to the vote of the qualified electors of the County."

In "In re Opinions of the Justices" (147 So. 623), the Justices decided that where H. 53 provided "5%" in the Constitutional provision and "10%" for the ballot, that the latter was merely surplusage.

In the recent case of *Harmon v. County Board of Education supra*, the Supreme Court of Alabama held that the words, "three mills" as used in the notice had a well defined meaning and that this meaning was understood

by the voters at the time they voted for the passage of the tax. In the present matter, three mill levies were being voted by counties in all parts of the State and I believe that the voters understood when they voted that the tax was to be used "for public school purposes" as provided in the constitutional provision authorizing the levy. The words of the Probate Judge in this case were not words of limitation but rather words of explanation, and the meaning of these words was in addition to the general "public school purposes" set out in the constitutional provision.

In the case of *Shanks v. Winkler* supra, which also involved the three mill levy, objection was made to the tax on the ground that the petition designated the tax for "school purposes" and not for "public school purposes". The court said "these objections should have been avoided but our opinion is that the office of the petition and the character of the fund to be raised by the proposed tax are too clear to admit a very serious doubt".

I am of the opinion, therefore, that the tax may be used for any public school purposes and that the uses to which you wish to apply this tax are within the purview of this term.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 27, 1935

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
103 Court House,
Birmingham, Alabama.

Taxation—Appeals from Board of Review.

1. Appeals from ad valorem assessments made for the assessing year beginning October 1, 1934 and in which assessments were completed and appeals taken prior to October 1, 1935 are governed by Section 61, Acts 1923, page 152.

2. Where taxes are paid in cases in which appeals are pending, the same should be paid under protest and the officer receiving the same should remit to the various agents in the manner authorized and required by Section 380 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 18th in which you state:

"Please give me your opinion as to whether or not Section 78 of House Bill 324—Revenue Bill, regular Session, 1935, applies to appeals taken

from the valuations of the Boards of Review for 1935 tax. If your opinion is in the affirmative shall I as tax collector, in cases that are settled prior to January 1, require the taxpayer to pay the full amount of tax assessed and petition the various governmental agencies for a refund of taxes paid in excess of the amount fixed by the Circuit Court, or shall I accept a certified copy of the judgment of the Circuit Court fixing the values, and collect on same, taking an error on my books for the amount of reduction given, as has been the custom in the past, under Section 191—1929 Revenue Code.

"If, in your opinion, Section 78 does not apply to the appeals taken prior to September 1, shall I hold payments made on such appeal cases in a trust fund pending the outcome of the appeal, as has been done in the past, or shall I remit such payments along with other taxes as provided for in said Section?"

"I would appreciate your opinion on these questions at the earliest possible moment as there are around 200 appeal cases being settled in this county that I must handle within the next few days."

In reply I advise that under the first question involved in your request for opinion, to-wit: Where the case is settled in Circuit Court and you have an order of the Circuit Court fixing the taxes prior to the time such taxes become delinquent, should you accept the amount due as shown by such decree and take error for the amount of reduction, it seems that whether you are operating under Section 61 of the Revenue Act of 1923 or Section 78 of the Revenue Act of 1935, that it would be proper for you to accept the order of the Circuit Court. This is the final determination of the matter, in the absence of an appeal, and presumably the Circuit Court will not certify to you any cases in which an appeal has been taken. This is clearly recognized by Section 78 of the 1935 Act when it provides that "When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year **before the same become delinquent.**" Naturally, if the case is settled before the taxes become delinquent, there is no occasion for the payment of anything but the actual amount due as shown by the decree of the court.

In cases in which the appeal has not been settled prior to the time the taxes become delinquent, I am of the opinion that the taxes based on the preceding year's assessment must be paid. Section 61 of the Act of 1923 provides in part:

"Provided, however, that no appeal shall suspend the right of the State and counties to collect from the taxpayer the taxes due upon his property as fixed for assessment for the preceding tax year and the taxpayer shall, when the taxes are due, pay all taxes due at the assessed value of the preceding year."

The 1935 Act provides in part as follows:

"When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same become delinquent and upon failure to do so, the court, upon motion ex mere motu, must dismiss the appeal unless at the time of taking the appeal

the taxpayer has executed a supersedeas bond with sufficient sureties to be approved by the Clerk of the Circuit Court in double the amount of taxes payable to the State of Alabama, conditioned to pay all taxes, interest and costs due the State, county or any agency or subdivision thereof, such appeal shall be preferred cases."

Presumably the appeals to which you refer were only made for the assessment year beginning October 1, 1934 and in which the assessment was made and the appeal was taken before the effective date of the 1935 act. Therefore, in my judgment Section 61 of the 1923 Act would control and the taxpayer is required to pay and the tax collector is required to collect the taxes due on the property based on the assessment for the preceding year. See *State vs. M. & O. R. R. Co.* 134, So. 91.

Your third question pertains to the disposition of the taxes so collected pending such appeal. Section 380 of the 1935 Revenue Act provides:

"SECTION 380. Whenever any money for taxes paid to any officer authorized to receive or collect same is paid under protest, such officer shall distribute to the various governmental agencies the proportion due such governmental agencies in the manner and at the times provided in this Act, and at the time of such distribution, shall note the fact that such payment was made under protest, and the Treasurer or custodian of funds of such governmental agency, shall in giving his receipt therefor, note that such tax was paid under protest. Any tax collector or other officer authorized to receive and collect taxes noting such fact, shall not be personally liable for such payments should such taxes ultimately be held illegal or excessive."

This section is to be read along with Section 78 which specifically provides for the manner of refunds. It is, therefore, my judgment that any monies paid to you in cases in which appeals are pending, should be paid to you under protest and that it is your duty, at your regular times for making remittances to the various agencies entitled to such taxes, to remit such amounts paid under protest and to note in each case and to each agency the name of the party making the payment and the fact that such payment was made under protest.

I have also your letter of December 19th, stating:

"Supplementing my letter of yesterday asking for an opinion on Section 78 of the new revenue bill, I would like to ask for your opinion on one other phase of the tax status on appeal cases. For instance, A assesses his tax for the tax year of 1935 and appeals same to the Circuit Court, then after January 1 and before he has paid his tax he secures a reduction in said court. Shall I, under the provisions of Section 78, require him to pay the amount of taxes that he was originally charged with, and have him petition for refund or shall I do the sensible thing of accepting certified copy of court order and allow him to pay net amount due under such order?

"I shall appreciate your giving me your opinion on this phase of the question in addition to the questions raised in my letter of yesterday."

The reply to this is, I believe, incorporated in the foregoing opinion, but answering your question specifically, I advise that, in my opinion, if at any time prior to the actual payment of taxes you receive the decree of the Circuit Court fixing the amount of the assessment and the taxes due, that you should collect such amount and take error for any excess or collect any additional amount shown to be due by such decree. Of course, it is the duty of the Tax Collector immediately after January 1st to make demand and proceed to the collection of all taxes.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 30, 1935

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

Licenses: Chain Store—

1. Person taking out a license required to sell specific article likewise liable for store license if operating a store.
2. Store licenses are transferable if the same business is actually transferred.
3. Rolling stores are not subject to the store license levied by Chapter 3, Article 13 of the 1935 Revenue Act.
4. Particular questions of fact discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please advise me if, in your opinion, the following listed cases are liable for store licenses under Chapter 3 of Article 13, Acts of the 1935 Legislature.

"1. Shall a person, firm, corporation, copartnership or association be required to secure a store license, to open, operate, maintain or control a store, or mercantile establishment from which goods, wares or merchandise of any kind are sold either at retail or wholesale that already has in his or their possession a State license to sell a particular thing, said person, firm, corporation, copartnership or association selling nothing else except that named on State license?

"2. Are Store Licenses that are issued to a certain person, firm, corporation, copartnership or association, transferable to another person, firm, corporation or association at the location for which license was originally issued? The second business being of the same class or, of an entirely different nature.

"3. Does a store, commonly known as a Rolling Store require a Store License? By Rolling Store we mean a wagon or truck that carries a more or less complete line of goods, wares, or merchandise and that travels over the country selling at retail to customers.

"4. Are Store Licenses that are issued for a certain location transferable to another location? Example—A store opens at a certain location. The furniture and fixtures are soiled and worn and the stock is more or less depleted. The owner acquires a new and larger location separate and distinct from the old, with improved furniture and fixtures and a larger and more complete stock of wares. Does this new location require a store license of its own?

"5. A person, firm, corporation, copartnership or association owning a business, also owns another business of an entirely different nature under the same roof. There is no similarity what-so-ever between the class of goods, wares or merchandise sold from the two places. Each business has its own separate name and the advertising is done separately. For the convenience of the customers there is an entrance between the two places on the inside of the building. Do both of these places of business require a separate store license?

"6. A person, firm, corporation, copartnership or association operates a store-house separate from their business from which goods, wares, or merchandise are displayed for sale and from which, sales are sometimes made. Is this store-house liable for store license?

"7. Are leased departments in department stores liable for store license? Example A shoe manufacturer will lease certain space in a department store for the sale of shoes and his business will be separate and distinct from the other departments. He will either pay a fixed sum for rent and carry his accounts in his own set of books or, he will have the department carry his accounts, the department store retaining a certain percentage amount from the sales consummated, for their own use as payment for this service and rent."

The answer to question 1 is to be found in Schedule 155.4 of the Revenue Act of 1935, which prescribes:

"The license fee herein prescribed shall be paid annually and shall be in addition to the filing fee prescribed in subsections 1 and 3 of this Schedule and shall be in addition to all other license or privilege tax now or hereinafter levied."

This further emphasized by Section 357 which provides:

"Whenever in this Act two or more licenses on the same business or occupation are required, it is hereby declared to be the intention of the Legislature that all such licenses as are herein levied shall be collected without credit or offset except where specific provision is made therefor."

While it is true that in an opinion rendered to the State Tax Commission subsequent to the enactment of the original Chain Store Act of 1931, this office held that if a person took out a special license to do a particular thing and engaged in no other endeavor or sold no other article than that for which special license was produced, he was not liable for the store license, such opinion was based on the particular terms of the statute. The statute has by specific provision quoted above provided for the payment of the store license in addition to any other levied.

The answer to question 2 is to be found in subsection (b) of Section 358, which provides:

"A business or privilege for which such license is issued is under actual sale transferred to a new ownership, in which case, a transfer of license may be effected by application to the Probate Judge originally issuing such license, and the payment of fifty cents (50c)."

You will note the terms of the statute and the transfer would, under its terms, have to be limited to the transfer of the actual business. If, as you suggest, an attempt is made to transfer a license to an entirely different business, it is my opinion that it would not come within the terms of Subsection (b) of Section 358.

Answering question 3, it is my opinion that rolling stores are not subject to the store license for the reason that licenses generally are levied on fixed places of business and rolling stores do not have such fixed places of business. Moreover Schedule 146 levying a license on rolling stores levies it on a graduated scale similar to the provisions of the Store Act. It would seem that by specific provision, the Legislature attempted to take care of this form of business, leaving the operation of the store tax to groups or chains of stores having fixed places of business.

The answer to question 4 is largely dependent on the particular facts. Section 350 provides in part as follows:

"In case it should become necessary to remove any business for which a license is required by this Section from one location to another location in the same county and such business be continued as the same kind and character and by the same person or firm as that carried on at a former location, another license shall not be required for such business for the same license year."

Under the facts suggested by you, it would appear that the business originally licensed has not actually been moved, but that a new and different business has been opened. As the question is primarily one of fact, I, of course, cannot give you a categorical answer to your inquiry as the facts in every particular case will have to determine. Roughly, I will say that if it

was a bona fide change of location no new license is required; if it is entirely a new business, license would be required.

The answer to question 5 likewise, to a considerable extent, turns on the actual facts in the case. If the two businesses are actually distinct, licenses on two entitles are required; if they are actually one entity, even though different goods are kept in different departments, only one license is required.

Answering question 6, it is my opinion that the store-house which you describe would be a store within the meaning of the statute.

I think the answer to your seventh question is largely to be found in Schedule 155.4 which provides:

"Every person * * * etc. opening, operating, etc. one or more stores or mercantile establishments."

It would appear from the facts set out by you that such parties are operating mercantile establishments separate and distinct from that operated by the owner of the store. If this be true, I am of the opinion that there is liability for the license.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 2, 1936

Hon. D. E. Leslie,
Judge of Probate,
Macon County,
Tuskegee, Alabama.

Licenses.

1. Under Schedule 33, wholesale tobacco dealers are liable for one state license of \$100.00 and \$5.00 to each county in which they do business.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 26, 1935, which follows:

"Please advise me as to wholesale dealers in cigars, cigarets, etc., as to license. I issued license to wholesale cigars \$150.50. Under schedule No. 33, and it seems that under this schedule \$100.00 for the state and \$5.00 for each county, instead of \$50.00 for the county.

"Before refunding this money the clerk of the County Board of Revenue would like a ruling."

Schedule 33, Section 348, Chapter 1, Article XIII of the 1935 Revenue Act reads:

"Each wholesale dealer in cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff or any substitute therefor, either or all, shall pay one privilege license to the State of One Hundred Dollars (\$100.00), and Five Dollars (\$5.00) to each county in which such wholesale dealer does business. The phrase 'wholesale dealer' as used in this Schedule shall include persons, firms, corporations, clubs, or associations who shall sell and/or store, or offer to sell any one or more of the articles enumerated herein to retail dealers for the purpose of resale only. The privilege license herein levied shall be in addition to the sales tax as provided in Schedule 159."

In an opinion of this office under date of October 29, 1935, to Hon. Eugene B. Henry, Commissioner of Licenses, Birmingham, Alabama, construing this Schedule, it was held:

"Schedule 33. As quoted by you, this provides one state license and a County license of \$5.00 in each county in which such wholesaler of tobacco does business."

Therefore, you should have collected from the dealer mentioned in your letter \$100.00 for State license and \$5.00 for county license, instead of collecting \$100.00 for State and \$50.00 for county license as you did.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 2, 1936

Hon. D. R. Boyd,
Deputy Solicitor,
Randolph County,
Roanoke, Alabama.

Veterans — Land purchased by World War Veteran with money received from the Government for disability compensation is not exempt from taxation in the State of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of December 3, 1935, in which you state:

"At the request of the Tax Assessor and Tax Collector of this county, I will thank you to render us an opinion on exemptions of World War Veterans under circumstances as follows:

"The veteran expended money received as disability compensation for the purchase of real estate. Is this real estate exempt from taxation?

"I have not found any statute which exempts such real estate, but there may be some special Act or some Federal law covering the subject that I have omitted, and as the veteran is so earnestly contending, the tax officials wish your opinion."

You request my opinion: If this real estate is exempt from taxation? It is my opinion that your question should be answered in the negative.

The Supreme Court of Alabama in the case of State v. Wright, 224 Ala. 357, 140 So. 584, held that property bought with money received under the Adjusted Compensation Act was subject to State and County taxation. The Court said as follows:

"It is well settled, that provisions for exemption from taxation must be construed strictissimi juris, and claims of exemption not clearly within the import of the language of the statute must be rejected. It is clear that the exemption applies only to compensation, insurance, and maintenance and support allowance, adjustment certificate and sums payable under the Act of Congress, and does not extend to privately owned property purchased with money arising from such sources, and which was at the time of the purchase within the jurisdiction of the State and subject to its power of taxation."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 2, 1936

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Counties -- not authorized to expend funds for the construction of a building to be used for living quarters by the sheriff or jailer.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 10, 1935, which is as follows:

"We shall appreciate your opinion as to the legality of the Commissioners Court contracting for a building to be erected on the County Property, adjoining the County jail, which would be occupied by the Sheriff or jailer, and the kitchen of said building to be used to prepare meals for the prisoners in the County jail.

"The County has been furnishing the Sheriff or Jailer living quarters for several years. And this building is now badly in need of repairs.

"We wish to know if the Commissioners Court has a legal right to contract for the new building and pay for same out of the County funds."

I am of the opinion that your inquiry should be answered in the negative. I am unable to find any authority of law authorizing the county to build living quarters for the sheriff or jailer.

The construction and maintenance of county buildings, including courthouse, is governed by Article 5 of Chapter 16 (Sections 207-233) of the Code of 1923. In this connection I wish to refer you to an opinion of this office rendered to the Judge of Probate of Henry County on August 24, 1928. (Biennial Report of Attorney General, 1926-1928, p. 716).

It is a matter of common practice for sheriffs or jailers to live in the jails. But this office has heretofore held that there is no provision for the furnishing or maintaining of that part of the jail. — **Biennial Report of Attorney General, 1924-1926, p. 282.**

The size of a county jail is governed by Sections 215 and 4877 of the Code of 1923, which provides that same must be of sufficient size to contain four apartments, one for white men, one for white women, one for colored men and one for colored women.

As above stated, I know of no authority, either expressed or implied, that would authorize the expenditure of public funds for constructing a building to be used for living quarters by the sheriff or jailer. Therefore, your inquiry must be answered in the negative. This is true although the food for the prisoners may be prepared in the new building and the new building may be situated next to the jail.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 6, 1936

Mrs. Jesse W. Nunnelee, Chairman,
Board of Registrars, Montgomery County,
Montgomery, Alabama.

Registrars — Board of Registrars entitled to check all original papers, including those for years prior to 1935, if necessary, for the purposes of purging poll list.

Residence of one year in county required before one is entitled to register.

Election clerks in Probate Office subject to direction of Board of Registrars during seasons of purging poll list or registration in Montgomery County.

Opinion by Assistant Attorney General Small.

Dear Madam:

I have your letter of January 4, 1936, in which you request my opinion as follows:

"Can I make request of the Probate Judge to give into the hands of the Registrars the original registration papers for years as far back as 1915? We necessarily must have these papers, as the purging begins Monday and will go back a number of years.

"Is it not the law that those who have been in the County two years prior to the next General Election are entitled to register?

"Must this purging be for the year 1935 or can it cover more years? There seems to be a prevailing idea among certain people that 1935 is the only year to be purged.

"Will it be permissible under the law for the Registrars to use the election clerk who has office in Probate Office, during season of purging or registration?"

In reply I wish to advise that in my opinion your first and fourth questions should be answered in the affirmative. I refer you to Section 2 of an Act of the 1931 Legislature, (Acts 1931, page 152) which controls the situation and is as follows:

"That in addition to the other duties to be performed under the direction of the Judges of Probate, it shall be the duty of the election clerks herein provided under the direction, supervision and instructions of said Judges of Probate to carefully examine the records of registered voters on file in said office and make a report to the Board of Registrars

when said Board is in session, for the purpose of purging the registration list as provided by law, showing all names appearing on said list of registered voters who are dead or who have removed from the county and prepare all necessary notices to be issued by the Board of Registrars to all persons whose names appear on the list of registered voters who have removed from the county, and keep a docket of all such names stricken from the list of registered voters showing the reasons therefor, date of service of notice, and date of order of the Board of Registrars striking any name off of said list. It shall be the further duty of said election clerk to carefully check the list of all persons paying poll tax each year, and after carefully checking same with the list of registered voters, to prepare a list of qualified voters of said counties, as provided by law under the supervision and instructions of the Judges of Probate who shall certify to the correctness of same. The said election clerk shall be ex officio clerk of the Board of Registrars and under their supervision and instructions shall perform all duties required of him by said Board. It is the intention of this Act to provide for a correct list of qualified voters of said counties to be furnished the several election officers at each election or primary as now provided by law, and it shall be the duty of said election clerk to perform any and all services in this connection to carry into effect the purposes of this Act."

It will be seen that the purpose and intention of this Act is "to provide for a correct list of qualified voters of said county to be furnished the several election officers in each election or primary as now provided by law * * *"

The provision of the general law requiring the Board of Registrars to purge poll lists is found in Section 392 of the Code of Alabama, 1923, as amended by the Act of 1927, at page 274, as follows:

"Times for purging list of registration. — The board of registrars shall meet in each county on the first Monday in January, 1928, and every two years thereafter, for purging the registration list, and may continue in session one week. The names of those who have died, become non-residents of the State, become insane, and been so declared by inquisition of lunacy, or who have been convicted of any offense mention in Section 182 of the Constitution, since being registered, or otherwise disqualified as electors under the provision of the Constitution, and any names which may have been fraudulently entered on such list, shall be stricken from the registration list."

In my opinion, the Board of Registrars are entitled to all original registration papers with which to purge the poll list. The purpose of the Act as set out above may require checking poll list for a period of years prior to 1935, and it is my opinion that the authority of the Board of Registrars to check the poll list is broad enough to include lists prior to 1935 in order that the purpose and intention set out in the Act, supra, may be accomplished.

The Act further provides that "the election clerk shall be ex officio clerk of the Board of Registrars, and under their supervision and instructions shall perform all duties required of him by said Board."

In my opinion, the answer to your second question should be in the affirmative. I refer you to Section 178 of the Constitution, which is as follows:

"To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year; provided, that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal."

I further refer to Section 381 of the Code of Alabama, 1923, which enumerates the qualifications of persons entitled to register.

In reply to your third question, I wish to advise that in my opinion this purging should not be confined to the year 1935. (See answer to question one.)

I wish to further refer you to an opinion rendered to Hon. Wm. W. Hill, Judge of Probate, Montgomery County, under date of September 12, 1935, and the opinions of the Attorney General and authorities cited therein. I also call your attention to an opinion under date of December 16, 1935, to Mrs. M. D. Holman, Chairman, Board of Registrars of Sumter County, copy of which I enclose you herewith.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 9, 1936

Hon. John S. Golson,
Probate Judge, Butler County,
Greenville, Alabama.

1. License Inspector — Commissioners Court may pay for citations, citation letter blank, blank record book and indexing and rubber stamp for License Inspector.

2. Elections — County to pay for costs of publishing of notice and election supplies.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of December 13, 1935, in which you request my opinion as follows:

"There has been submitted to the Commissioners Court of this County for payment a bill by The Butler County News, of Georgiana for citations, citation letter blanks, blank record book indexing and rubber stamp, in the amount of \$18.45, for the License Inspector of this County. I shall appreciate it if you will advise whether it is proper for this bill to be paid by the County.

"There has also been submitted to the Commissioners Court by the Greenville Advocate a bill in the amount of \$154.46, for publishing election notices of the special elections to be held and for election supplies. While the statute provides that the Sheriff shall give notice of the election, I do not find any authority for the County to pay for the publication of the notice. I shall appreciate it if you will advise whether this bill is proper to be paid by the County."

I call your attention to Section 353 (h) of the Revenue Bill which is as follows:

"(h) It shall be the duty of the Court of County Commissioners or other governing body of the several counties to supply the License Inspector with necessary **citation blanks** and **other necessary forms** to be paid for by the County."

It is my opinion that the County may properly pay for the items set out in your request. Authority is specifically given by Section 353 (h), supra, for payment by the county for the necessary citation blanks for the License Inspector. You will note that the section above cited also provides for payment by the county for "other necessary forms" for said Inspector. The courts have laid down the principle that "words are to be construed in their popular sense — the plain sense in which people generally understand them — unless it plainly appears from the writing in which they appear that they were intended to be employed in some other sense."

Harrison v. State, 102 Ala. 170, 15 So. 563

Crook v. Com. Ct. of Calhoun County, 144 Ala. 505.

Underwood Typewriter Co. v. Marengo Co. Bk., 203 Ala. 128, 82 So. 158.

In my opinion the natural import of the words "other necessary forms" warrants the inclusion of blank record books and indexing and rubber stamps, and it is my opinion that the county should pay for these articles.

Your second inquiry must be answered in the affirmative. I call your attention to an opinion of this office to the Hon. J. M. Gray, Chairman, Walker County Commission, Jasper Ala., dated July 13, 1935 in which it was held that the costs of publication of notice of elections is paid for by the counties. A copy of this opinion is inclosed for your information.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 10, 1936

Hon. J. A. Keller,
State Superintendent of Education,
Capitol.

Schools — County Boards of Education must appoint custodian of County School Funds under the provisions of Act No. 507, S. B. 424, approved September 13, 1935. Only the provisions of Bains Bond Act (Acts 1933, p. 203) which are in conflict with Act No. 507, supra, are repealed.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 17, 1935, which is as follows:

"Will you please let me have as early as convenient your interpretation of Section 1, of Act 507, S. 424, approved September 13, 1935, in view of Sections 94 and 295-300, School Code of 1927, and Sections 2, 15½, 16, 19, 20, and 21 of H. B. 344, Bains, approved April 21, 1933.

"The question arises whether Section 94 of the School Code of 1907 as amended September 13, 1935, makes it the duty of each County Board of Education to immediately designate a **Custodian of County School Funds** to displace the present official serving in that capacity with the same functions and duties under the designation **County Treasurer of School Funds**; or, does the law contemplate that as the terms and bonds of the present **County Treasurers of School Funds** expire it becomes the duty of **County Boards of Education** to designate a **custodian of School Funds** and fix the amount of his official bond subject to approval of the State Board of Education through its executive officer, and State Superintendent of Education.

"Will you further advise me whether the provisions of H. B. 344, Bains, approved April 21, 1933, relating to the filing of official bonds of **County Treasurers of School Funds** govern the filing of official bonds of the **Custodian of County School Funds** in so far as these provisions are not in conflict with Section 1 of Act 507 S. 424, approved September 13, 1935."

In answer to your first inquiry, I am of the opinion that it is the duty of each County Board of Education to immediately designate a custodian of County School Funds to displace the present County Treasurer of School Funds under the provision of Section 1 of Act No. 507, S. B. 424, approved September 13, 1935, which amended Section 94 of the School Code of 1927. Said section specifically provides "that the County Board of Education shall appoint a custodian of public school funds of the county." Section 11 of said Act provides: "That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed." The above proviso, in my opinion, shows a legislative intent that the County Treasurer of School Funds be immediately replaced by the Custodian of County School Funds. However, I

see no objection in the County Board of Education appointing the County Treasurer of School Funds as Custodian of County School Funds and making use of the same bonds with proper amendments and approval to comply with the provisions of Section 1 of Act No. 507, S. B. 424, approved September 13, 1935, *supra*.

I am of the opinion that your second inquiry should be answered in the affirmative. The 1935 Act, *supra*, providing for the Custodian of County School Funds only repealed laws or parts of laws in conflict (See Section 11). It did not repeal any other provisions of former laws. Therefore, the provisions of the so-called "Bains Bond Act", (Act 1933 p. 203) not in conflict with the 1935 Act, *supra*, were not repealed. The 1935 Act, *supra*, merely created the office of Custodian of County School Funds in lieu of the County Treasurer of School Funds. The functions and duties of each office are practically the same. The 1935 Act was silent as to some functions and duties necessary to the office in question. It is necessary to refer to the "Bains Bond Act", *supra*, to give the 1935 Act, *supra*, a full field of operation.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 11, 1936

Hon. Eugene B. Henry,
Commissioner of Licenses,
Jefferson County,
Birmingham, Alabama.

Driver's License: City Officers.

Motorcycle scouts employed by municipality required to secure driver's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

In reply to your letter of December 13, in which you state:

"Please advise me if police motorcycle scouts operating a motorcycle owned by the City of Birmingham, are required to purchase driver's licenses."

I advise that in my opinion such officers are required to secure driver's license. Section 5 of the driver's license provides the only exemptions given and none are afforded to officers of the State, Counties or Municipalities.

The license levied is in my judgment on the driver and hence the fact that the driver is employed by a sub-division of the State, does not serve to relieve such driver of qualifying under the drivers license law.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 13, 1936

Hon. Geo. L. Sherrill,
Register in Chancery,
Limestone County,
Athens, Alabama.

Register is not entitled to commissions on sale not made by him, but is entitled to commissions on money received and distributed by him.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of December 27, 1935, in which you request my opinion as follows:

"A bill has been filed in my court to ratify and approve a contract of sale made between the parties including a guardian for minors.

"Under the decree of the court approving the contract of sale \$20,000.00 Dollars is paid into court. And in addition the purchasers assume the balance of a mortgage debt of \$3,430.00.

"The question is, is the Register entitled to fees in a case of this kind just like it would be if the Register has made the sale?

"If not, please give an opinion stating what fees the Register will be entitled to under this statement of facts.

"I must have this information in the office by January 1st, 1936, and shall thank you to give this matter your early attention."

I assume that the money "paid into court" is to be received and disbursed by the Register. In such case, under the facts stated, you as Register would not be entitled to commissions as if you had made the sale.

This question was passed on by the Supreme Court of Alabama in the case of Rome & D. R. Co. v. Sibert (97 Ala. 393, 12 So. 69), where a receiver

sold a railroad and submitted the sale to a Court of Chancery for approval, and made the following statements:

The register claimed a fee for making the sale. The Court denied the claim.

"Our statute (section 3683 of the Code) declares the scale of commissions the register is entitled to for making sales. Section 3665 provides that 'the law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law.' In *Tillman v. Wood*, 58 Ala. 578, it was said: 'The rule of statutory construction is well settled that statutes giving costs are not to be extended beyond their letter, but strictly construed, for the reason that costs are in the nature of a penalty.' See, also, *Dent v. State*, 42 Ala. 514; *City Council v. Foster*, 54 Ala. 62; *State v. Brewer*, 59 Ala. 130; 1 Brick. Dig. p. 417, Sec. 6. Dorsey made and reported the sale in this case, and he was unquestionably entitled to commissions for making it. **The register did not make the sale, and he is not entitled to commissions.** To hold otherwise would be to depart from the statute, (Code 3683) and all the rulings pronounced upon it." (Underscoring supplied).

"Section 3683" above referred to, (Code of 1886) is the same as Section 7283 of the Code of 1923, which is the present law in reference to fees allowed to registers. You would not, therefore, be entitled to commissions on the sale.

You would, however, be entitled to the commissions provided for, "For receiving, keeping, and paying out or distributing money, other than arising from sales. . . ." (Code Sec. 7283). While this provision specifically except funds received "from sales", is must be interpreted in conjunction with the rest of the paragraph and means, on all funds received and distributed except from sales made by the Register.

Therefore, you would be entitled, "on the first one thousand dollars, one per cent; on all over one thousand dollars and not over five thousand dollars, three-fourths of one per cent; on all over five thousand dollars, not exceeding ten thousand dollars one-half of one per cent; and all over ten thousand dollars, one fourth of one per cent;" (Section 7283, Code of 1923).

This commission would be paid on the \$20,000.00 received and distributed by the register, but would not be received on the \$3430.00 mortgage debt assumed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 13, 1936

Hon. H. E. Kendrick,
Tax Collector, Dallas County,
Selma, Alabama.

Taxation. Payment of taxes on separately assessed parcel does not relieve such property from being subject to levy for any other taxes due by the taxpayer.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please give me as soon as possible your opinion on the following:

"A taxpayer has several pieces of Real Estate, also personal property made on the same assessment and each piece of real estate described and valued separately. He wishes to pay the State and County tax on all except one (1) piece of the Real Estate and says that he wishes not to pay the tax on the one piece, but wants it to go to tax sale due to the fact that there are certain Municipal improvement costs that he does not want to pay.

"Under the above circumstances, is there any legal authority for me to accept payment and release the property paid on of any further liability insofar as state and county tax are concerned."

In reply, I advise that as you know taxes are a personal obligation on the part of the person charged therewith as well as a lien on his property, and that all of the property of the taxpayer is subject to levy for taxes due by him.

Revenue Act 1935, Sec. 372.

Revenue Act 1935, Sec. 172.

It is likewise the Collector's duty to collect all the taxes.

Revenue Act 1935, Sec. 164.

It is the Collector's duty to levy on personal property.

Revenue Act 1935, Sec. 170.

In order to make collection he may run garnishments.

Revenue Act 1935, Sec. 173.

He is presumed to have exhausted personal methods of collection, before asking for a sale of real estate.

Revenue Act 1935, Sec. 177.

I have cited the foregoing Sections of the New Revenue Act but they are found substantially if not identically in the same words in the prior Acts.

My conclusion therefore is that while, a person may make partial payments of taxes (Sec. 12) and under certain conditions, may pay on separately assessed parcels (Sec. 169 A) yet such action does not relieve the taxpayer of the duty of paying the balance due by him nor does it relieve the collector of enforcing the collection of such balance by all the methods provided which may be necessary.

If a further remark be needed, I think it quite clear from Sec. 172, that the payment of taxes due on one parcel does not relieve such parcel from being subject to levy for any other taxes due by the taxpayer, and that you are not authorized in the absence of payment of all the taxes due to release any of the property of the taxpayer from further liability.

Also see Biennial Report 1928-1930 p. 253.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 13, 1936

Hon. C. D. Rutherford, Chairman,
Board of Registrars,
Russell County,
Hatchechubbee, Alabama.

Time — "One week," as used in Section 392 of the 1923 Code of Alabama is composed of six working days and Sunday.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of January 6, 1935 in which you state:

"The Russell County Board of Registrars is now engaged in purging the Registration List as required by law.

"The law on this subject states that the Board shall be in session **One Week.**

"Should this be interpreted as meaning **Seven Working Days**, or the period Jan. 6 through January 11th, which is **Six Working Days**?"

In answering your question, I am assuming that you have reference to Section 392 of the 1923 Code of Alabama, which is as follows:

"392. Times for purging list of registration. — The board of registrars shall meet in each county on the first Monday in January 1928, and every two years thereafter, for purging the registration list, and may continue in session one week. The names of those who have died, become non-residents of the State, become insane, and so declared inquisition of lunacy, or who have been convicted of any offense mentioned in Section 182 of the constitution, since being registered, or otherwise disqualified as electors under the provision of the constitution, and any names which may have been fraudulently entered on such list shall be stricken from the registration list."

It is my opinion that the phrase "one week" as used in the statute, *supra*, means one week of seven consecutive days, being on the first Monday in January and ending at twelve o'clock midnight on the next Sunday thereafter. Said week to include six working days and Sunday. — See 62 *Corpus Juris*, page 973, and cases cited thereunder.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 14, 1936

Mrs. Jessie W. Nunnelee,
Chairman, Board of Registrars,
Montgomery County,
Montgomery, Alabama.

(1) Electors — Registration — Applicant for registration must be twenty-one years of age or more at time of registration.

(2) Electors — A person whose civil and political rights have been forfeited by reason of conviction of crime may register at the session of the Board next succeeding the restoration of said rights.

(3) Electors — Aliens — The naturalization or alien ipso facto confers like rights upon his wife and minor children who are then residents of Alabama.

(4) Electors — Registration — Illiteracy is not necessarily a disqualification from registration.

(5) Electors — Person residing without the State may nevertheless be qualified elector.

(6) Board of Registrars — Act No. 532, approved September 14, 1935 providing dates for special sessions of the Board for registration of electors supersedes Section 376 of the Code of 1923, Section 376 of Acts 1927, page 274, Acts 1932, page 67 and Acts 1933, page 50, which provided for such special sessions for such purpose.

Opinion by Assistant Attorney General Rowe.

Dear Madam:

I have your request for opinions as follows:

"(1) Is the applicant allowed to register provided he or she is 21 years of age by the next general election or is the applicant required to be 21 years of age or over at the time of application?

"(2) How long after civil rights are restored to a citizen before he or she is allowed to register?

"(3) When a foreigner becomes naturalized, do his wife and children automatically become naturalized?

"(4) Shall the applicant, who cannot sign his or her name, be allowed to register?

"(5) When and under what circumstance is a person a 'non-resident' within the meaning of the Registration Statutes?

"(6) I will also appreciate the dates of meetings of the Board of Registrars, calling your attention to the sections in Volume 1 of the Code of 1923, the amended Act in 1927, the amended Act in 1932, the amended Act in 1933, and especially Acts 460 and 532 of the 1935 session. It appears that Act 532 amends Section 376 of the Code of 1923, as amended by an Act of the Legislature of 1927, whereas this same section was also amended in 1932 as shown on page 67, but this fact is not included in Act 532. The Act of 1932 provides for certain dates of registration which are not included in Act 532 of the 1935 Legislature. Is the 1932 Act void or still in force?"

Your first inquiry has been answered heretofore in the negative in an opinion addressed to you dated December 12, 1935.

Answering your second inquiry, a person whose civil and political rights have been forfeited by reason of his conviction of crime may apply for registration at the session of the Board of Registrars next succeeding the restoration of said civil and political rights.

Your third inquiry is answered in the affirmative. The naturalization of an alien ipso facto confers rights of citizenship on his wife and minor children who are residents of this State. See 2 C. J. page 1128.

Your fourth inquiry must be answered in the negative. The constitution of 1901, Section 181, provides:

Sec. 181. After the first day of January, nineteen hundred and three, the following persons and no others, who, if their place of residence shall remain unchanged, will have, at the date of the next general election, the qualification as to residence prescribed in section 178 of this article, shall be qualified to register as electors; provided, they shall not be disqualified under section 182 of this constitution.

"First. — Those who can read and write any article of the Constitution of the United States in the English language, and who are physically unable to work; and those who can read and write any article of the Constitution of the United States in the English language, and who have worked or been regularly engaged in some lawful employment, business, or occupation, trade or calling, for the greater part of the twelve months next preceding the time they offer to register; and those who are unable to read and write, if such inability is due solely to physical disability; or,

"Second. — The owner in good faith in his own right or the husband of a woman who is the owner in good faith, in her own right, of forty acres of land situated in this state, upon which they reside; or the owner in good faith in his own right, or the husband of any woman who is the owner in good faith, in her own right, of real estate situated in this state, assessed for taxation at the value of three hundred dollars or more, or the owner in good faith, in his own right, or the husband of a woman who is the owner in good faith, in her own right, of personal property in this state assessed for taxation at three hundred dollars or more; provided, that the taxes due upon such real or personal property for the year next preceding the year in which he offers to register shall have been paid, unless the assessment shall have been legally contested and is undetermined."

It will be observed that the foregoing constitutional provision does not, in all cases, make illiteracy a disqualification from registration.

Your fifth inquiry involves a mixed question of law and fact.

"Legal residence," within the contemplation of the constitutional and statutory provisions relating to registration, is a question which must be solved from all the surrounding facts and circumstance. Cf. *Lucky vs. Roberts*, 211 Ala. 578 and cases there cited.

In *Shepherd vs. Sartain*, 64 So. 57, 185 Ala. 439, the Court said:

"(12) 8. So, also, when a registered voter abandons his residence in this state and acquires a legal residence in a foreign state, he cannot vote again in this state until he has again qualified by a new period of residence and a new registration herein, as prescribed by law for an original registration."

"(37) 27. When a voter moves away from an existing domicile and acquires a home and resides in another place, it will be presumed, noth-

ing appearing to the contrary, that he has changed his legal residence." See also Words and Phrases, Fourth Series, "Legal Residence."

Legal residence may be said to be that place in which a person's habitation is fixed without any present intention of removing. It embraces (1) the fact of residence and (2) the intention to remain. *Curry vs. Barnes*, 76 So. 22, 200 Ala. 256; *Young vs. Pollak*, 5 So. 279, 85 Ala. 439.

In answer to your sixth inquiry, it is my opinion that Act No. 532, approved September 14, 1935 is, in fact, amendatory of and a substitute for all prior enactments upon that subject, namely: Section 376 of the Code of Alabama, 1923 as amended by Acts of 1927 (Sec. 376) page 275, and by Acts 1932, page 67 and by Acts of 1939, page 50.

When a subsequent act covers the entire field upon which prior acts operated, and patently was intended as a substitute therefore, the prior acts are repealed thereby, although no specific intention to repeal the same may be indicated in the said subsequent act. *Bradford v. Carson*, 223 Ala. 594, 137 So. 426.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

January 15, 1936

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

License and Taxation—Record Filing Tax—

(1) Where deeds are executed by co-tenants to effect partition of lands, each conveyance is liable to record filing tax (Schedule 16, Section 348 of Revenue Act of 1935.

(2) The value of the interest conveyed in deeds of co-tenants to effect partition of lands is the measure of the record filing tax to be collected upon such conveyance.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated January 2, 1936, as follows:

"Kindly refer to Biennial Report of the Attorney General, 1926-28 at page 42, where an opinion was rendered by your office with reference to Deed Tax between Tenants in Common.

"Also refer to Acts of 1927, Page 163, Section 21½, which states in part as follows: 'provided, further, that where several deeds or instruments are executed by tenants for the same consideration, only one of such instruments shall be taxable under this Section.'

" 'A' and 'B' are Tenants in Common of 80 acres of land. 'A' deeds to 'B' his undivided one-half interest in one of the 40's. 'B' deeds to 'A' his undivided interest in the other 40. The value of the land being \$40.00 an acre, how much Deed Tax shall we collect? Shall we collect Tax on both Deeds? Does section 21½ over-rule in any respect the opinion first above referred to."

The opinion in Biennial Report of the Attorney General 1926-1928, at page 42, which holds that "where one tenant in common or joint tenant conveyed his interest in the jointly owned property to his co-tenant, the value of the interest conveyed is the measure of the filing tax", represents the studied judgment of this office upon the question.

Section 21½ of Acts of 1927 (which has been carried over into and superseded by Schedule 46 of Section 348 of the Revenue Act of 1935) providing that "where several deeds or instruments are executed by tenants in common for the same consideration, only one of such instruments shall be taxable, etc.", does not apply to the situation dealt with in the opinion, supra, nor does it apply to a conveyance between co-tenants such as that detailed in your request.

Specifically, your inquiry is as to the amount of the deed filing tax collectible on the two conveyances between "A" and "B", who are joint owners or tenants in common of 80 acres of land of the value of \$40.00 per acre, whereby each conveys to the other his undivided one-half interest in one of the two 40s, so that each becomes the owner of the fee of one of the parcels. In my opinion, the principle of the former opinion of this office, cited supra, governs, and the deed filing tax should be collected on each deed, according to the value of the property or interest therein conveyed. Under your statement, each 40 is valued at \$1600.00; each deed conveys an undivided one-half interest in a parcel of land of that value, that is to say, each conveys a property value of \$800.00. A filing tax, based on such valuation of \$800.00, should be collected on each deed when the same is offered for record.

The conclusion of the opinion of this office dated December 28, 1934, addressed to Hon. Irby Pope, Probate Judge of Perry County, (Opinions of Attorney General, Office Edition, Book 1-A, page 131) construing the provision of Section 21½ of the General Revenue Act of 1927 (Acts 1927, page 163) provided that "where several deeds or instruments are executed by tenants in common for the same consideration, only one of such instruments shall be taxable", was departed from in a subsequent opinion dated October 8, 1935, addressed to Hon. W. C. Batson, Probate Judge of Chambers County (Opinion of Attorney General, Office Edition, Book 7-A, page 52). The opinion, supra, addressed to Judge Pope, and all other opinions heretofore rendered by this office, which may conflict with the conclusion of that addressed to Judge Batson, supra, and of this opinion, are overruled and withdrawn.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 15, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Taxation: Board of Review.

(1) The assessment of the Board of Review after the close of the tax year, becomes final and cannot be set aside or changed in the absence of fraud.

(2) Such assessment as shown by the record cannot be changed by parol evidence.

Opinion by Assistant Attorney General Moore:

Dear Sir:

Your letter of December 30 states:

"According to the Tax Assessor of Pickens County, Alabama, the following procedure took place in that County during the year 1933 in the matter of reductions of assessments, to-wit:

"The County Commissioners, who comprise the Board of Review, met in the office of the Tax Assessor as required by law, on the first Monday in June of the year of 1933 to consider applications made for reductions in assessments. The Tax Assessor as Tax Assessor of Pickens County, had prepared a typewritten list showing on the list the previous year's valuation, the current year's valuation as fixed by the Taxpayer and the amount of each reduction. This list was placed before the Board for their consideration.

"The Board was in session about an hour, and they did not examine each assessment as required by law. No taxpayer appeared at the meeting to press his claim for any reduction.

"Several questions were asked the Tax Assessor by members of the Board of a general nature, and comments were made by the board of the poor crops made in Pickens County the previous year and the not so bright outlook for another year. A motion was made by one member of the Board that the reductions be granted as asked for, and the valuations be permitted to stand as fixed by the taxpayers. This motion was duly seconded and carried. The Tax Assessor acting under this authority proceeded to make up his tax abstract using the valuations as fixed by the taxpayers. No minutes were recorded of the meeting, and no notations of the Chairman, who was one of the members of the Board of Review, were made on the assessment sheets.

"The above is the substance of the action taken by the Board at said meeting and is the authority used by the Tax Assessor in setting up the valuations for the 1933 taxes.

"1. Has the Board of Review authority to grant reductions by blanket order?

"2. Are these reductions chargeable to the Assessor?

"A prompt reply to this request will be appreciated."

(1) In reply to question 1, I call to your attention opinion appearing in Biennial Report 1930-1932, p. 270, holding that the Board of Review has no such authority.

(2) In reply to your second question, I cannot under the facts set out by you, make a categorical reply. I do not see how you can go behind the judicial action of the Board of Review as shown by the record.

If the Board of Review, as indicated by your statement, did not follow the statutes in making these assessments, or exceeded their powers, the agent of the State Tax Commission should have apprised the Commission and such assessment should have been set aside and the properties assessed by the Commission.

The record, especially after the fiscal year has closed is presumptively conclusive, and generally speaking in the absence of fraud, cannot be impeached by parol evidence.

While the action of the Board under the facts set out by you was not strictly in accordance with law, the State having taken no action to set aside the assessment within the tax year. I do not think you can reopen the same at this time.

State vs. Doster Northington Drug Co., 196 Ala. 447.

The Tax Assessor is secretary of the Board of Review and his entries in the Board of Review column were of the action of the Board. I am therefore of the opinion that you cannot charge these reductions to the assessor.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 18, 1936

Hon. H. W. Clayton,
Clerk of the Circuit Court,
Marshall County,
Guntersville, Alabama.

1. Clerk of Marshall County Court need not present requisition to purchasing board for letterheads, stamps and blanks. (Bill No. 492, General Acts 1935).

2. Fine and Forfeiture Fund—Clerk and Sheriff entitled to claims from, where nolle prosequi entered in felony cases.

3. Fine and Forfeiture Fund—Costs and fee properly paid from, in cases transferred from County and Circuit Courts to Juvenile Court.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of December 12, 1935, in which you request my opinion as follows:

"Please give me an opinion as to whether Clerk of Circuit Court has the authority to buy his office supplies, such as stamps, letterheads, and blanks for the office and record books, without a requisition furnished to the Purchasing Agent of the Board of Revenue, (Bill No. 492), (H. 1073, Coleman) Sec. 13, Approved September 13, 1935, (Local Bill for Marshall County).

"Please give me an opinion as to where the Clerk and Sheriff are entitled to any fine and forfeiture claims in felony cases placed on the County Court Docket and then not pressed by the Probate Judge in cases such as Peace Proceedings, attempts to murder, seduction etc., and if the Clerk and Sheriff are entitled to Claims on cases where any cases are transferred to Juvenile Court."

Your first inquiry must require a negative reply. I call your attention to Section 5 and to Section 13 of the Act mentioned in your query.

Section 5 provides that the Board of Revenue created by the Act shall have power "to provide for purchase of necessary books, stationery, telephones, postage, telegrams, telephone calls for the use of all county officers, and said Board of Revenue in the conduct of its official business * * *."

The pertinent parts of Section 13 are as follows:

"Requisition shall be submitted for such supplies and material by the engineer and by other officers of said County to the Board of Revenue (the chairman of such Board of Revenue elsewhere in Section 13 is constituted County Purchasing Agent) and shall be passed upon and approved by the Board at either a general or special session before any purchases shall be made by said purchasing agent, **except for letterheads, stamps and blanks for the officers of the County.** * * *."

Further, "the word 'supplies' shall be deemed to include all machinery, implements, material, supplies, stationery, and office supplies for all offices, departments, and activities of the county* * *."

It is to be seen from the foregoing, therefore, that it is not necessary for a requisition to be furnished by the County official when purchasing letterheads, stamps and blanks. Accordingly, the Clerk of the Circuit Court has authority to buy stamps, and letterheads and blanks for the office without requisition furnished to the purchasing agent of the Board of Revenue.

Your second inquiry should receive an affirmative answer. This office has repeatedly held that where a nolle prosequi is entered in a criminal case, the costs and fees of such case are properly payable from the Fine and Forfeiture Fund under Section 4039 of the Code of Alabama 1923. Biennial Report, Attorney General 1928-30, page 132; Opinion of Attorney General (Office Edition) Book 13, page 83; Opinions Attorney General (Office Edition) Book B, page 77.

In answer to your third inquiry, I call your attention to an opinion of this office to the Hon. J. R. Hardy, Sheriff, Chilton County, Clanton, Alabama, of June 12, 1935 (copy of which is herewith enclosed for your convenience), in which the matter raised by you is thoroughly examined. It was there held that costs and fees in cases transferred from County and Circuit Courts to the Juvenile Court are proper charges against the Fine and Forfeiture Fund of the County.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

January 18, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol,

Taxation—Tax Sales.

Probate Judge legally may become purchaser at the tax sale of lands in which he owns interest, notwithstanding Section 270 of Revenue Compilation of 1929 (Section 261, Acts 1919, page 282).

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated December 30, 1935, as follows:

"Section 270 of the Revenue Compilation of 1929 found on page 165 reads in part as follows:

"If the Assessor, Collector, Judge of Probate or any county Tax Assessor shall directly or indirectly, be concerned or interested in the purchase of any real estate sold for taxes, the sale shall be void."

"In the examination of the records of the Tax Collector of Jackson County, it is noted that the then Judge of Probate, Hon. J. M. Money, purchased certain real estate for delinquent taxes, this sale, however, being made to him as 'Mortgagee'. The sales docket shows that subsequently deed was executed to him as 'J. M. Money, Mortgagee'."

In my opinion, there is no violation of the Section quoted in part in your inquiry.

This statute is highly penal and should be strictly construed in favor of persons sought to be subjected to its operation. *Anderson v. City of Birmingham*, 205 Ala. 604, 88 So. 900. See also *Alabama & Southern Digest* Volume 25, title "statutes", Key Number 241.

The obvious intention of the Legislature in the enactment of Section 270, *supra*, was to discourage the named officials from generally dealing in lands sold for delinquent taxes. It ought not to be extended by construction to include cases where in the act of the officer in becoming the purchaser at such sale is in fact merely in protection of a direct interest which he has in the land sold.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 22, 1936

Hon. E. A. Hammett,
Judge of Probate,
Talladega, Alabama.

The Fine and Forfeiture fund of the various counties of the State is not subject to the Budget Act approved Sept. 9, 1935, but is a separate and distinct fund specified for a separate and distinct use.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 23, 1935, in which you request my opinion as follows:

"I would appreciate you advising me whether in your opinion the provisions of Act numbered 379, Alabama General Laws, Regular Session, 1935, apply to the Fine and Forfeiture Fund of Talladega County."

My answer to your question is in the negative. The provisions of the Act you refer to only apply to such funds as the Board of Revenue, Commissioners Court or other like governing body have supervision over.

The Fine and Forfeiture Fund of the County is a separate and independent fund. It does not have any connection with the general funds of the county or any other special fund. It is not paid out by the Commissioners Court or other like governing body. Its existence is purely statutory; it does not originate from any constitutional grant.

Sanders v. Commissioners Court of Elmore County, 117 Ala. 543.
Brown and Street v. Parris, 93 Ala. 314, 9 So. 603.

This fund is a separate and distinct fund of its own peculiar nature and has no connection with any other funds of the County. It does not arise from taxation and is no part of the general fund of the county. It is not controlled or supervised by the Court of County Commissioners or like governing body. It is not paid out on warrants emanating from such governing bodies and never comes under its supervision.

I call special attention to the case of Rhodes vs. Marengo Co. 205 Ala. 667. While of course this case is not dealing with our new county budget law, but it does show the status of the Fine and Forfeiture Fund of the various counties of the State. Therefore, as stated above, it is my opinion that what is known as the County Budget and Financial Control Act of 1935, Act No. 379, has no application to this fund, and it therefore does not enter into the County budget.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 22, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Special Judge appointed under Section 8571 may not be paid from State Treasury.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I am in receipt of your letter of recent date, stating:

"Is there any provision of law authorizing the State Comptroller to pay for services rendered by a special judge that was appointed under Section 8571 of the Code of 1923.

"If this can be done, what rate of pay is he entitled to receive?

I wish to call your attention to Sections 6719, 6720 and 10299 of the Code of 1923."

There is no provision by which the State Comptroller is authorized to pay for services rendered by a Special Judge appointed under Section 8571 of the Code of 1923.

While Section 160 of the Constitution provides for the appointment of a Special Judge, under the conditions set forth in said section, no compensation is provided. Section 6720 of the 1923 Code provides only for the payment of Special Judges where the Governor has issued a commission. Section 10299 of the Code provides for the expense of regularly elected Judges. Neither these nor any other Sections of the Code or Statutes make provision for the payment of Special Judge under Section 8571 of the Code.

As funds cannot be paid from the Treasury except upon definite authority, I am of the opinion that payment cannot be made in this case.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 23, 1936

Hon. Matt A. Boykin,
Judge of Probate,
Mobile County,
Mobile, Alabama.

Taxation—Redemption

Where the Probate Judge issues decree for sale of lands for taxes without including interest to the date of such decree, and the time for appeal elapses, he or the succeeding Probate Judge is without authority to set such decree aside or to issue a supplemental decree to include such interest.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of sometime ago in which you state:

"Previous to the death of Probate Judge Price Williams of Mobile County he signed several decrees for land redemption. These decrees failed to include the interest from the date of delinquency to the date of sale.

"Will it be incumbent of me as present Probate Judge of Mobile County to issue a supplemental decree including all interest from the date of delinquency to the date of sale, or does my responsibility end with collecting the stipulated amount as shown by the decrees of the former Probate Judge?"

Also your recent letter again calling this matter to my attention.

It is judgment that the decrees having been duly entered and signed, there is no authority for you to set them aside or issue a supplemental decree to include the interest. Clearly such interest should have been included but presumably the court in rendering the decree found the proper amount due and, in the absence of an appeal, I doubt if there is any authority to set such decree aside or to render an additional decree.

Section 269 of the Revenue Act of 1935 provides in part as follows:

"In order to obtain the redemption of land from tax sale where the same has been sold to the State, the party desiring to make such redemption shall deposit with the Judge of Probate of the county in which the land is situated **the amount of money for which the lands were sold, etc.**"

Section 291 states in part that "Whenever any real estate has, prior to January 1, 1935, been sold for taxes and bid in by the State at tax sale, the same may be redeemed in **the same manner as heretofore provided** for sales made after January 1, 1935 except that the following additional provisions shall apply."

It will be noted that the basis of the redemption is the amount for which the lands were sold. Presumably this included interest to the date of sale, but if the decree failed to include interest, I do not think the proper remedy is by a supplemental decree, or by setting the decree aside after the time for appeal has elapsed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 23, 1936

Hon. C. S. Tompkins, Chairman,
County Commission,
Baldwin County,
Bay Minette, Alabama.

Counties—May issue refunding warrants under the provisions of Act No. 379, H. B. 191, approved September 9, 1935, known as the County Financial Control Act, to pay accounts due State for examination of accounts of county officers under Section 749, Code of 1923. State has discretion as to acceptance of said refunding warrants under Local Acts 1931, p. 100.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 3, 1936, which reads as follows:

"Under the Lee Act of the recent Legislature being House Bill No. 191, the County Commission of this County budgeted its funds and expenses for the fiscal year commencing October 1st, 1935, and in the budget of expenditures failed to include the sum of approximately \$3,000.00 owing to the State of Alabama for examination of its public officer's accounts, the examinations having been made in 1932.

"Under the Lee Act the County is authorized to borrow in anticipation of collection of its taxes 95 per cent of the moneys borrowed on such anticipation for the preceding fiscal year. Preceding the fiscal year the County borrowed \$20,000.00. In setting up its budgets for the current fiscal year the County included as an item of revenue 95 per cent of its last year's anticipation, namely, \$19,000.00. Its entire income, including estimated taxes and authorized anticipations, is consumed by the budgeted expenses.

"The County exceeded its debt limit several years ago. The Lee Act also provides for the issuance of Refunding Warrants for indebtedness outstanding as of October 1st, 1935.

"Under the Act creating the County Commission of Baldwin County, Local Acts 1931, page 101 et seq. (page 104), the Commission is authorized to invest its Sinking Fund created for the payment of its outstanding bonds in interest bearing securities of the County or Baldwin. The County has money in the Sinking Funds for its outstanding road and bridge bonds.

"Please advise:

"First: (a) Whether or not the County may issue Refunding Warrants under the Lee Act for this debt due to the State of Alabama.

(b) Whether or not the County may purchase these Refunding Warrants for its Sinking Fund.

(c) Whether or not the County may issue such warrants and deliver them to the State in settlement of said debt.

"Second: (a) Whether or not the Emergency clause of the Lee Act the County may issue Anticipated Tax Warrants for the purpose of raising money to pay this debt due the State.

(b) Whether or not it may purchase such Anticipated Tax Warrants on behalf of its Sinking Fund.

(c) Whether or not it can deliver such Anticipated Tax Warrants to the State in settlement of this debt."

I am of the opinion that subhead (a) of your first inquiry should be answered in the affirmative. This office has heretofore ruled that Sections 9 and 10 of Act No. 379, H. B. 191, approved September 9, 1935, known as the

"County Financial Control Act," which provide for the issuance of refunding warrants are applicable to valid outstanding claims against the county due and unpaid as of October 1, 1935, except bonded indebtedness, whether same are in the form of warrants or not.—**Opinion to Judge of Probate of Clarke County on November 16, 1935.** The claim under present consideration seems to be open account claim of the State for auditing accounts of county officials under Section 749 of the Code of 1923, which was due and unpaid as of October 1, 1935.

I am of the opinion that subhead (b) of your first inquiry should be answered in the affirmative. The authority of Baldwin County to invest its sinking fund in its county warrants is authorized specifically by Section 6 of Act No. 239, H. B. 597, approved May 29, 1931 (Local Acts 1931, p. 103), which defines the powers and duties of the County Commission of Baldwin County. The pertinent part of Section 6 is as follows:

" * * * to set aside, appropriate and use such part of the revenue of the County as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness, and to invest such sinking fund in interest bearing securities of the United States, the State of Alabama, or of the County of Baldwin or any other County or Municipality of this state, or deposit the same on interest bearing account, within the State, as said Commission may deem wise, * * * "

The answer to subhead (c) of your first inquiry is governed by an opinion of this office rendered to County Treasurer of Conecuh County on November 20, 1935. Said opinion, in answer to an inquiry as to whether the holder of a county warrant must accept a refunding warrant in lieu thereof, stated as follows:

"In answer to your inquiry, I am of the opinion that the holder of the warrants in question need not accept refunding warrants in lieu thereof if his rights would be prejudiced thereby.—**Rhodes v. Marengo County Bank**, 205 Ala. 667, 88 So. 850. This presents a question of fact involving the financial condition of the county, the status of the warrants in question in the matter of preferences, and the items included in the budget for the present fiscal year."

The above principle is applicable to the holder of claims against a county whether same have been put in the form of warrants or not.

The above answer to the subheads of your first inquiry renders unnecessary the answering of your second inquiry. Since the county may issue refunding warrants for the claims in question, it will be unnecessary to resort to Section 17 of the County Financial Control Act dealing with "Emergencies."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 29, 1936

Hon. C. D. Rutherford, Chairman,
Board of Registrars,
Russell County,
Hatchechubbee, Alabama.

Voters—Voters should offer proof to Board of Registrars proving residence qualifications in Alabama and in the county in which said voter claims to be a qualified elector.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of January 8th, 1936 in which you request my opinion as follows:

"Will you kindly advise me how the Board of Registrars, shall be guided in answering the following question which will be asked them on the second Monday in February, when the Board meet as required by Law?

"In cases where it has been ascertained from reliable information that certain parties have moved out of the state and county, and where the sheriff has been given notices to serve them, to show cause why they should not be stricken from the voting list, and they then state that Russell County is their home, what is valid proof that they may offer to show, in order that they may continue citizenship in Russell County."

In reply, I wish to advise that your request involves both questions of law and facts. I refer you to the case of Lucky v. Roberts, 211 Ala. 578 and authorities therein cited in which the Court said:

"What state of facts constitute a change of domicile is a mixed question of law and fact."

In those cases where "certain parties have moved out of the state and county," and they say that Russell County is their home, the question for decision is whether or not their "legal residence" for purposes of registering and voting has been changed.

Upon removal from the state, a voter may or may not lose his legal residence in Alabama, dependent upon whether or not his removal is accompanied by the intention of making it temporary or permanent. Section 366 of the Code of 1928 provides as follows:

"Residence not acquired or lost by temporary absence.—No person shall lose or acquire a residence either by temporary absence from his or her place of residence without the intention of remaining, or by being a student of an institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired

any other lawful residence, or by being absent from his or her place of residence in the civil or military service of the state, or the United States; neither shall any soldier, sailor or marine, in the military or naval service of the United States, acquire a residence by being stationed in this state."

The question of whether or not a voter intended his residence to be changed temporarily or permanently must necessarily decide the question of loss of legal residence in Alabama. I refer you to the case of *Curry v. Barnes*, 76 So. 22, 200 Ala. 256 and authorities cited therein in which the court said:

"Legal residence may be said to be that in which a person's habitation is fixed without any present intention of removing. It embraces (1) the fact of residence (2) the intention to remain."

In deciding this question, consideration must be given to the declaration of the voter as to the intention and to his actions tending to prove or disprove such intention. In the case of *Griffin v. Wall* 32, Ala. 149, the court in considering this question said:

"What a party says on leaving home, or immediately previous thereto, or while on a journey, explanatory of the act or object of leaving or performing such journey is admissible evidence as part of *res gestae* whenever the act itself is material evidence. So, as a general rule, whenever in any controversy, it is permissible to prove any act of a third person, the declaration of such person accompanying the act and explanatory thereof are also admissible. What degree of credit the accompanying declaration shall receive must depend on their reasonableness and consistency."

See *Pitts v. Burroughs*, 6 Ala. 723; *Stallings v. Newman*, 26 Ala. 300 (Am. Dec. 723; *Gillespie v. Burleson*, 28 Ala. 551; *Scott v. State*, 300 Ala. 503.

If a voter goes to another county for a temporary purpose only and with the intention of returning, this does not work a change of domicile nor a forfeiture of his right to vote in his own county he is presuming to retain his present residence until a new one is gained *facto et animo*. See *Lucky v. Roberts*, *supra*.

See also *Clary v. Sanders*, 43 Ala. 295.

In my opinion the individual who seeks to prove Russell County as his domicile and legal residence shall offer proof that he has not removed from the county or the state with the intention of acquiring a new and permanent domicile or residence—in other words, that his removal is temporary and that he expects to return to Russell County when the purposes of his removal are accomplished. On this question of intention, however, the declaration of the party, although admissible to prove residence, is not necessarily conclusive because it may be disapproved by his acts. See *Pope v. Howle*, Allen v. Cooper, 149 So. 222 in which the court said:

"(7, 8) The effect of these cases may be thus stated: When the fact of the legal residence of a citizen is once established, such fact of residence is presumed to continue, and this presumption prevails until it is established by the evidence that he has elected to or has established a residence at or in another place. It may further be stated that, while the determination of the place of legal residence of a citizen presents a question of fact, yet in determining that fact, the intention of the citizen is entitled to and must be given due consideration in connection with his relevant acts. It is this combined result of intention and acts—speaking for the voter of his actual domicile, official residence as a citizen and as an elector seeking to cast his vote—that determines the right to vote in such precinct."

In my opinion, the Voter should offer proof that he has committed no acts which would militate against proving his required intentions of retaining his citizenship or legal residence in Russell County. It will, of course, be impossible here to enumerate all the possible acts which would militate against such intentions, but perhaps the most conclusive and common would be registration and/or voting in his new place of abode.

On this question, I wish to refer you to previous opinions of this office and authorities cited therein which in my judgment contain correct settlements of the law on this point. Biennial reports of opinion of the Attorney General, 1930-32, pages 918 and 795. Opinion to Mrs. Jessie W. Nunnelee, Chairman of Board of Registrars, Montgomery County, Montgomery, Alabama rendered on January 14, 1936, copy of which I enclose for your convenience.

Of course you understand that the Board of Registrars are acting in a judicial capacity and such evidence as will be convincing to the Board should be offered in a case of this kind.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 29, 1936

Hon. M. W. Forman,
Judge of Probate, St. Clair County,
Pell City, Alabama.

Attention Evelyn Pearson, Probate Clerk.

Deed conveying property to religious, educational or charitable institutions is subject to what is known as filing tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 16, 1936, in which you request my opinion as follows:

"Will you please advise me whether or not there is a tax due on a deed that conveys property to church owners? It is real estate which is valued at seventy-five dollars. I presume that the Probate Judge receives the customary recording fee for same."

It is true all property used exclusively for educational, religious or charitable purposes is exempted from ad valorem tax and no other, under Section 2, page 4, 1935 Revenue Act. But this has no bearing or connection with what is known as filing tax, under Schedule 46, page 253, 1935 Revenue Act, which is in part as follows:

"Deeds, bills of sale, etc. No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, or which conveys any interest in any such property, except the transfer of mortgages on real or personal property within this State upon which the mortgage tax has been paid, deeds or instruments executed for nominal consideration for the purpose of perfecting the title to real estate, and deeds and other instruments or conveyances, executed prior to October 1, 1923, shall not be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record to-wit: * * * "

And the same is true of Schedule 94, page 222 of the Act above referred to. The schedule reads in part as follows:

"No mortgage, deed of trust, contract or conditional sale, or other instrument of like character which is given to secure payment of any debt, which conveys any real or personal property situated within this State, or any interest therein, shall be received for record unless the following privilege or license taxes shall have been paid upon such instrument before the same shall be offered for record to-wit: * * * ."

I am of the opinion that deeds, mortgages, etc. which convey property to educational, religious or charitable institutions even though it is to be used exclusively for such purposes are subject to the filing tax under Schedule 46 and Section 94, supra. It is true that this office in an opinion to Hon. B. L. Malone, Judge of Probate Morgan County. Biennial Report of Attorney General 1932-1934, page 339, held that where a deed made to a City Board of Education conveying lands to be held in trust by the members of the Board to the use of public schools of said City was not subject to this tax, for the reason that the deed is for the benefit of the State Public School and to tax filing such a deed would be in effect the State taxing itself, and this can never be done unless the Act levying it specifically states that it shall apply either to the State or to such an instrumentality of the State.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 29, 1936

Hon. Elvin C. McCrary, Chairman,
Board of Registrars, Calhoun County,
Anniston, Alabama.

Registration—

Purged list—Persons whose names are to be purged from poll list held entitled to personal notice served by sheriff when addresses are known; when "whereabouts" is unobtainable, newspaper notice as provided by law held to suffice.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of January 15, 1936 in which you request my opinion as follows:

"The list of qualified voters in Calhoun County includes the names of a large number of persons who have not voted in this county for several years and who now reside in other counties in the State, also some whose present residence is known. I understand that those known to be non-residents of the State can be removed without notice but a question has arisen among the Board members as to the proper method of removing those described above. Will you kindly give me your opinion on this matter?"

In reply, to your request, I wish to advise that, in my opinion, under the facts stated in your letter, those persons whose names are to be stricken from the poll list are entitled to service of personal notice by the sheriff when their present addresses are known. In those cases where the person's "whereabouts" is unobtainable and personal service by the sheriff is impossible, a newspaper notice as required by law in my judgment is sufficient. I refer you to an opinion of the Attorney General rendered to the Judge of Probate, Clanton, Chilton County, Alabama, February 7th, 1930 reported in the Biennial Reports of the Attorney General 1928-1930, page 759. See, also, Section 393, Code of 1923, as amended by the Acts of 1927, page 276.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

January 29, 1936

Hon. J. Percy Oliver,
Judge of Probate, Tallapoosa County,
Dadeville, Alabama.

Rights of way may be paid for from the Road and Bridge Fund or from Gasoline Fund.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of December 11, 1935, stating:

"It has been the practice in this, Tallapoosa County, to pay for rights of way for public roads from the General Funds of the County. Would it be legal to make these payments from the Road and Bridge Fund or from the Gasoline Funds?"

Your first inquiry is answered in the affirmative in an opinion to Hon. Marvin Pearce of Winfield, dated July 11, 1935, copy of which I enclose.

I am of the opinion that your second inquiry should also be answered in the affirmative. This Department has ruled in reference to a former gasoline statute that gasoline funds could be used for the purchase of rights of way. (Opinion to Probate Judge J. M. Money, 1930-1932 Biennial Report, 1017), and I am of the opinion that the same rule applies to the present statute.

I refer you to these two opinions for your official guidance.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 3, 1936

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Taxation - Redemption - Erroneous payment of Interest.—

1. Upon redemption of property sold to the State subsequent to October 1, 1935 and prior to the opinion of November 22, 1935, interest was charged by the Probate Judge, such interest not being due under the provisions of Section 291 of the Revenue Act of 1935, such interest should be refunded to the redemptioner.

2. Where officer receiving such funds has remitted to the various agencies, refund should be made under the provisions of Section 296 et seq. of the 1935 Revenue Act.

Opinion by Assistant General Moore.

Dear Sir:

I received your letter some weeks ago in which you stated:

"Under instructions from the State Tax Commission, we collected interest on all past due taxes where redemptions were made in this

office for cash, during the month of October and during the month of November, up until the date of receiving your opinion of November 22 in which you held that such interest should not be collected.

"We have already remitted the interest collected during October to the various tax agencies, and we are holding the interest collected during November, for proper distribution. In only one or two instances was this interest paid under protest.

"Please advise whether or not we should make a refund to the taxpayer of interest on hand, and if such refund is proper, please advise what procedure would be necessary for taxpayers to secure a refund of interest already paid by us to the tax agencies in question. The interest involved amounts to a considerable sum of money, and we will thank you to give this matter your prompt attention."

In reply, I advise that in my opinion such interest as you received prior to the opinion of November 22 and which you did not remit to the various agencies should be refunded by you. As the funds never went into the treasuries, I see no reason why you should not make these refunds as you are required only to report the correct amount.

I have given much thought to the manner of refunds when a remittance has already been made by you to the various state agencies. It is my judgment that the interest which you collected during October and prior to the opinion and which has been remitted should be refunded, but the machinery authorizing such refund is not altogether clear. However, I am of the opinion that the machinery provided by Section 296 et seq. of the Revenue Act of 1935 is sufficient authority for the refund to be made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 4, 1936

Hon. J. P. Farish,
Sheriff of Monroe County,
Monroeville, Alabama.

1. If a defendant is arrested and carried before a magistrate on a felony charge, and after preliminary hearing the defendant is bound over to await the action of the Grand Jury, and his bail is fixed by the magistrate, this would carry the case directly into the Circuit Court without rearrest.

2. If the defendant is charged with a capital offense in the indictment even though the magistrate on the preliminary hearing had granted him bond, the court would naturally, after it read the indictment, order his rearrest and confinement in the county jail.

3. Defendants in all cases charged with felonies, which are not capital, and which have been heard before a magistrate and bound over on bond to appear at the Circuit Court and answer whatever indictment that may be found against such defendants, do not have to be rearrested but must appear in the Circuit Court on the day the trial is set and failing to appear, their bonds should be forfeited.

4. In capital cases, whether or not the defendant be in jail or on bond, he must be brought into court, and his case set down specially for trial and he must be present at the drawing of the special venire for said cause.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 16, 1935, in which you request my opinion as follows:

"The following question has arisen here, upon which we request your opinion.

"Section 3741 of the Code provides for certain fees for the sheriff for executing warrant or writ of arrest in misdemeanor and felony cases. Section 3278 provides for the issuance of writs of arrest by the Circuit Clerk forthwith after the finding of indictment by the Grand Jury.

"A defendant is arrested on a criminal charge and after preliminary hearing, is placed under bond to await the action of the Grand Jury. When the indictment is returned against this defendant, he is not present to surrender.

"The Court does not forfeit the bond but instructs the Sheriff to go out and get the defendant so that his case can be set for trial. The sheriff then makes another arrest under this *capias* or order of the Court. Is he not entitled under this state of facts, to another arrest fee, even though the defendant was under bond to await the action of the Grand Jury?"

If the defendant is charged with an offense, that is a felony and such an offense is bailable and the magistrate trying him on a preliminary hearing under Section 5238, Code of Alabama, 1923, binds him over to await the action of the Grand Jury and fixes his bond requiring him to appear at the Circuit Court or a court of like jurisdiction and answer whatever indictment or charge that may be found against him, and the Grand Jury indicts him for the offense charged, there can be no use for rearrest after the indictment --Ex parte Skelton, 104 Ala. 98. This bond guarantees his appearance to answer the indictment unless the Judge in his discretion, under Section 3364 Code of Alabama, 1923, and Section 3278 Code of Alabama, 1923 as amended in an Act approved July 23, 1931, General Acts 1931, p. 652, sees fit to increase the bond or hold the defendant without bond; in this event it becomes the duty of the sheriff to rearrest the defendant and require a new bond in

accordance with the order of the presiding Judge, (endorsed on the indictment), then it is my opinion the sheriff would be entitled to fee for both arrests.

If the preliminary hearing is for an offense which may not be bailable, depending on the evidence, and the magistrate holds, under the testimony the case made out presents one that is bailable and grants bond to await the finding of the Grand Jury, and the Grand Jury returns an indictment charging an offense which is not bailable, in this event, the Judge would so endorse on the indictment, then *capias* would issue, defendant would be rearrested and placed in jail. Then the sheriff would be entitled to two arrests provided he made the arrests in the original case which was before the magistrate.--State vs. Lowe, 204 Ala. 288 (85 So. 707)

If the dependant is under bond to await the action of the Grand Jury, and the Grand Jury indicts him for the offense originally charged on the preliminary hearing, he does not have to appear until his case is set down for trial, except where he is charged with an offense that may be punished capitally. In this event, he must appear even though he is under bond, if the indictment charges a capital offense, and have his case set down for trial and be present at the drawing of a special venire for same.

In all other cases the defendant must appear on the day his case is set for trial and if he fails to appear, on said date, and his case is called for trial, it is the duty of the Court to forfeit his bond and order an *alias capias* for his arrest and continue the cause.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 5, 1936.

Hon. Q. D. Taylor,
Sheriff, Marshall County,
Guntersville, Alabama.

1. Guard authorized, where tubercular prisoner is removed to unguarded hospital quarters under order of Circuit Judge.

2. Sheriff—Liability for injury to tubercular prisoner where removed to unguarded hospital quarters, dependent on attendant circumstances.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of December 18, 1935 in which you request my opinion as follows:

"One Tom Haney was a prisoner in my jail. The doctors who examined him here all say he has active tuberculosis. He has hemorrhages of some kind or character, spits up blood. He has epileptic seizures and was gassed during the World War. He draws \$50.00 per month from the government on an arrested case of tuberculosis.

"He is in jail without bail for murder in the first degree. I have no way of segregating him from the other prisoners at this time. It is impossible for me to keep them and him in this jail and keep him segregated without two additional guards, one to be with him in the daytime and one at night in the hospital portion which is not barred so as to hold the prisoners.

"He has been transferred by an order of the Circuit Judge to the Tuberculosis Hospital at Wetumpka. I have been ordered by Mr. Draper to remove him back, as I wired you today. In case he is removed back to this jail, what shall I do with him? The financial condition of the County is such that the Board of Revenue has seen fit not to make any appropriation under the General Budget for such purposes as these guards. They decline to pay them. Would I be subject to damages or prosecution if I placed him in the cell with the others. If he is placed in this hospital portion which is not barred and he should escape, would I be responsible without a guard? If he is placed in that portion and should happen to have one of these epileptic seizures, which come on suddenly, fall out of a window and break his neck or be injured, would I be responsible?

"If the Circuit Court should order him placed in this hospital department and order me to hire, at the expense of the County, two guards, one to be with him at all times in the day-time, the other at all times at night, would the Board of Revenue have to pay for these guards?"

In my opinion, an answer to the question, "In case the prisoner, Tom Haney, is removed back to the jail, what shall I do with him?" should dispense with the necessity of reply to your other inquiries.

In this regard, I call your attention to section No. 4811 Code of Alabama 1923, which provides for the removal of prisoners in ill health to some suitable place, under conditions as follows:

"4811. Removal of prisoners in ill health—When the life or health of any prisoner, who is not confined under process from any court of the United States, may be seriously endangered by longer confinement in jail, and that fact is made to appear clearly to any Circuit Judge, or to the Judge of the County Court of the County, such Judge, must, by an order in writing, direct the sheriff or jailer to remove him to some suitable place, or hospital, as near as may be to the jail, and there safely keep him until his health is sufficiently restored to authorize his recommitment to jail."

Under the authority given by this section, the proper procedure for you to follow should Haney be returned, is to remove said prisoner, under written order from the Circuit Court, to "some suitable place". In my opinion, the

hospital portion of your jail is such a "suitable place" within the above section to which you may properly remove the prisoner.

I further call your attention to section 4812 which provides for the summoning of guards when a prisoner is removed under Section 4811, supra. This section is as follows:

"4812. Same; guards summoned.—When prisoners are removed from the jail under the provisions of either of the two preceding sections, the sheriff or jailer has authority, and it is his duty, to summon such guards as may be necessary to insure their safekeeping."

I do not find, however, any authority of law that would authorize payment of these guards.

Section 3734 provides that,

"The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."

This office in an opinion to Hon. W. A. Quillen, Russellville, Alabama (Biennial Report Attorney General 1930-1932, p. 184), held that the State or County could not properly pay guard fees and expenses incurred in guarding escaped prisoner ill in hospital in a city in Mississippi.

I do not see that there is any material distinction between the case at hand and that treated in the above opinion.

Premises considered, it is your duty to receive the prisoner, when returned and, upon written order of judge place him in some "suitable place", such as the hospital division of your jail, or some other hospital "as near as may be to the jail", and summon such guards "as may be necessary to insure (his) safekeeping."

In answering the questions propounded by you as to your liability in the event of injury to Haney, or his escape if not properly guarded, will say that the sheriff, both by common law and by statute has been held to owe the direct duty to a prisoner in his custody to keep him free from harm and for any breach of such duty resulting in injury, he is liable to the prisoner. Whether due or ordinary care has been exercised in safekeeping and attending a prisoner such as the one now under discussion is a question of fact to be determined in the light of all the facts and circumstances. 57 C. J. 899 (Sec. 512).

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 7, 1936

Hon. L. L. Hendrix, Clerk,
Monroe County Board of Revenue,
Monroeville, Alabama.

County Health Officer—County Health Officer may handle registration of birth and deaths without violating Section 280 of the Constitution of 1901 and Section 2575, Code of Alabama 1923.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of January 18, 1936 requesting my opinion as follows:

"Would it be permissible under the law for the County Health Officer of Monroe County to do what is commonly called the Jail practice, and handle the registration of births and deaths as a part of his duties as County Health officer, and without additional compensation."

In my opinion, your inquiry should be answered in the affirmative.

Neither Section 280 of the Constitution of 1901 which provides as follows:

"No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this State; nor, unless otherwise provided in this constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peaces, constables, notaries public, and commissioner of deeds".

nor Section 2575 of the 1923 Code of Alabama, part 7 of which provides:

"No person holding an office of profit under the United States, shall, during his continuance in such office, hold any office of profit under this state; nor shall any person hold two offices of profit at one and the same time under this state, except notaries public."

have application to the office of County Health Officer, such officer not being an officer of the state within the meaning of the above cited sections. **Harrington vs. State**, 76 So. 422; **State vs. Sanders**, 187 Ala. 79; and **Biennial Report of the Attorney General** 1918-1920, page 99.

Accordingly, there being no inhibition against such Health Officer holding two offices, he may properly handle the registration of birth and deaths as provided by Section 1068 of the 1923 Code of Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 7, 1936

Hon. Alex Brantley,
Judge of Probate,
Pike County,
Troy, Alabama.

Counties—Refunding warrants issued for refunding temporary loans outstanding as of October 1, 1935, under Sections 9 and 10 of Act No. 379 H. B. 191, approved September 9, 1935, known as the "County Financial Control Act," and refunding warrants issued for emergencies under Section 17 of said Act are in same category as to preferences.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 17, 1936, which is as follows:

"Pike County has, at this time, a \$60,000.00 Tax Anticipation Loan which was outstanding at the time House Bill No. 191, known as the 'County Financial and Control Act' was approved and it is our desire to refund this \$60,000.00 loan.

"I would like very much to have your official opinion on the following:

"1. If a County refunds a Tax Anticipation Loan as authorized under Sections 9 and 11 of House Bill 191, and afterwards makes a temporary loan as authorized by Section 17 of House Bill 191, which loan has priority?

"2. In refunding a Tax Anticipation Loan as authorized under Sections 9 and 11 of House Bill 191, what funds should be pledged to meet yearly payments and interest of said loan?"

The refunding of temporary loans outstanding at the time Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act" became effective, viz., October 1, 1935, is governed by Sections 9 and 10 of said Act. (Opinion of Attorney General to Judge of Probate of Talladega County on December 6, 1935). Section 9 provides in part as follows:

"With the consent of the holders thereof, any county may refund, under the provisions of this Act, temporary loans outstanding when this Act goes into effect made in anticipation of the collection of taxes for the time and under the conditions and terms provided herein for the refunding of outstanding warrants."

It will be noted that the refunding is to be done under the conditions and terms provided for the refunding of outstanding warrants. In other words, the refunding warrants are payable over a period not exceeding twenty years and become a charge against the General Fund of the County in the fiscal

year in which the principal and interest are payable respectively. The amount due on refunding warrants in any fiscal year should be set up in the budget for that year. Section 11 has no bearing on refunding temporary loans but applies only to new temporary loans.

In cases of emergencies refunding warrants may be issued under the provisions of Section 17 of the County Financial Control Act, *supra*, which provides as follows:

"Section 17.—EMERGENCIES. In the event any situation over which the Board of Revenue, County Commissioners or other like governing body has no control results in an appreciable obligation against the county over and above what said Board has reason to anticipate, and for which no moneys from the current year's income are available to pay, such board may issue its interest bearing warrants, as now authorized by law, in an amount sufficient to pay such emergency obligation. And the interest and maturities or principal of such loans shall constitute a part of the budget for the year in which they mature. But before such warrants shall be authorized or sold under this Section, such Board shall inquire into and find that such emergency obligation has accrued and such finding spread upon the minutes of its proceedings."

It will be noted that the warrants issued under this section are issued as now authorized by law. This in my opinion means as now provided for the issuance of refunding warrants under Sections 9 and 10 of the Act. Section 17 further specifically provides that the principal and interest of such loans shall constitute a part of the budget for the year in which they mature.

The premises considered, it is my opinion that the refunding warrants issued for the refunding of a temporary loan outstanding as of October 1, 1935 and refunding warrants issued under Section 17, *supra*, for emergencies are in the same category. Both are charges against the General Fund and are payable out of the funds of the fiscal year in which they fall due.

Specifically answering your first inquiry, I am of the opinion that neither of the loans in question would have priority over the other.

In answer to your second inquiry, it is my opinion that refunding warrants are payable out of the General Fund. As to the relation of current operating expenses of a county and refunding warrants in the matter of preference, I wish to refer you to the case of *Rhodes v. Marengo County Bank*, 205 Ala. 667 88 So. 85. This presents a question of fact involving the financial condition of the county and the items included in the budget for any fiscal year.—*Opinion of Attorney General to County Treasurer of Conecuh County on November 20, 1935.*

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 8, 1936

Hon. D. B. Borden,
Judge of Probate, Hale County,
Greensboro, Alabama.

Counties—County Financial Control Act.

Where debt for courthouse building was contracted for prior to the adoption of the County Financial Control Act, Act No. 379, approved Sept. 9, 1935, the same may be refunded and is authorized by the provisions of said Act.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of January 23, 1936, in which you request my opinion as follows:

"Hale County during the fiscal year ending October 1, 1935, had borrowed \$10,000.00 to assist in payment of its new Courthouse. Subsequent to October 1st they borrowed \$6,000.00. We are very anxious to know whether, under the new Budget Law, these two amounts can be renewed. We would like, if possible, to extend the entire \$16,000.00 over a period of years. We have been advised that any debts or warrants issued subsequent to October 1st cannot be renewed. However, as this loan was made for the payment of an indebtedness already contracted prior to October 1st, don't you think that it is possible to renew that part of the loan amounting to \$6,000.00, as well as the \$10,000 contracted prior to October 1st.

"I will appreciate an opinion from you relative to this as early as possible."

The County Financial Control Act to which you refer limits the time and authority of the County Board "to incur obligations and to approve and pay claims for current operating expenses in any fiscal year to the income of such year available for such purposes.

It also authorizes "the refunding of outstanding general obligations."

From your statement, apparently the obligation for the building of the courthouse had been incurred prior to the effective date of this Act. If this is true, it is not affected by that part of the Act which limits the "incurring" of obligations. Further the expenditure was for an investment and was not for current expenses.

On the contrary, it was an outstanding obligation and was apparently contemplated as being of the class that may be refunded by the specific provisions of the Act.

The fact that a temporary loan has been secured to take care of this obligation merely changes the form of the obligation and does not prevent its being a general obligation.

I am therefore of the opinion that the entire \$16,000.00 may be refunded in accordance with the provisions of the Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 10, 1936

Dr. A. H. Collins,
Commissioner of Public Welfare,
State Capitol,
Montgomery, Alabama.

Public Welfare Department—

1. Applicant for Old Age Pension held not to lose required residence in Alabama by temporary absence from State.

2. State held to pay one-half and Federal Government held to pay one-half of Old Age Pension when pensioner does not have required twelve months' residence to constitute "legal settlement" in county.

3. The word "family" held to mean closely related members of household within the meaning of S. B. 397—Simpson.

4. Persons living in Almshouses not precluded from filing application for Old Age Assistance.

5. Applicant for Old Age Assistance charged with crime but not convicted held not ineligible for Old Age Assistance.

6. Applicant unable to find employment after bona fide effort to find same for support of family held to have just cause for failure to furnish such support.

7. (a) Confederate Veterans or their widows may make application for Old Age Assistance.

(b) State to pay three-fourths of maximum pension of fifty dollars (\$50.00) for Confederate Veterans.

8. County governing body held authorized to approve applications for Old Age Assistance.

9. County governing body required to notify applicant of action on application within five days after such action is taken.

10. County Director required to submit applications which are disapproved to county governing body for its confirmation.

11. State Board may appoint staff members from State Department to act as court of appeals only when such staff members are members of the Board.

12. (a) In cases of appeal to State Department by applicant for pension, State Department may increase the amount of said pension.

(b) County Department required to pay one-fourth the total pension the State Department approves in case of appeal.

13. State Department shall review all disallowances and all awards made by county governing body in cases where appeal is taken.

14. State Department may increase or decrease amount of pension approved by county governing body as in its opinion is justifiable.

15. County governing body authorized to increase or decrease amount of pension at the beginning of any annual appropriation for Old Age Assistance.

16. (a) & (b) County governing body may increase or decrease amount of pension at any time, subject to the provisions of Section 10 and 19 of S. B. 397—Simpson.

17. State Department authorized to require county governing body to keep records of disbursements and receipts for Old Age Pensions in the manner described by the State Department.

18. State Department not authorized to limit duties to be exacted of County Director by county governing body.

19. State Department authorized to set up rules and regulations not in conflict with S. B. 397—Simpson and S. B. 365—Walton.

20. Old Age Pensions held to be prior claim against Confederate Veterans Fund after Confederate pensions are paid in full.

21. Confederate Veterans held to be eligible for Old Age Pensions when properly qualified under the terms of S. B. 397—Simpson.

22. In event of a surplus or deficiency of State funds to be apportioned to counties, State Department must make apportionment as provided for by Section 16 of S. B. 397—Simpson.

23. Apportionment of funds allotted to the State by Federal Government provided for by Section 18 of S. B. 397—Simpson.

24. State Department held required to pay three-fourths of necessary pension in case of hospitalization regardless of maximum thirty dollars (\$30.00) set for Old Age Pension.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of December 28, 1935 in which you request my opinion. I have, also, your letter of January 24, 1936 supplementing your request as follows:

"On December 28, 1935, I transmitted to you a list of twenty-five questions pertaining to different phases of the Alabama Old Age Assistance Act.

"I wish to withdraw my request for an opinion on Question No. 25 for the present time."

For purposes of convenience, I have set out the first twenty-four questions of your original request and the answers thereto as follows:

1. Section III, subsection (c). In the event an applicant has been out of Alabama for 3 to 12 months on a so-called visit, would he have to return to Alabama and live 12 months addition in order to be eligible?

1. Senate Bill 397—Simpson. Section III, subsection (c) provides, as one condition of eligibility, that the applicant

"Has resided in the state for at least one year immediately preceding the date of the application."

You will note that the above quoted section required one year's residence in the state immediately preceding date of application.

The answer to your first question must turn, first, upon the legislative intent, and, secondly, upon the particular facts in each case. In my opinion, since the legislature did not see fit to define the term "residence" or the phrase "has resided" in any especial sense peculiar to this act, that the general and accepted legal definitions of these words, applicable to citizenship, would apply. It is a generally accepted fact that the word "residence" may have a double meaning; namely, a temporary place of abode unaccompanied by any intention to make it permanent, or it may be synonymous with the word "domicile" which would indicate a fixed purpose of making a permanent home to which the individual, while absent, would consistently maintain the animus revertendi necessary to maintain his legal residence and domicile in that place. (I refer you to an opinion of this office rendered to Hon. C. B. Rutherford, Chairman of the Board of Registrars of Russell

County, rendered on January 29, 1936). In my judgment, the word "residence" as used in this statute contemplates citizenship in Alabama since the benefits are primarily intended to be bestowed upon citizens of this state. In the event the applicant has been out of Alabama for three to twelve months on a so-called visit, in my judgment, the question of whether or not he would have to return to Alabama and live twelve months additional in order to be eligible for old age assistance must turn upon whether or not he has lost his legal residence in Alabama by removal, with no intention of returning to Alabama as his permanent home. See opinion to Hon. C. B. Rutherford cited above and authorities cited therein. See, also, opinion to Mrs. Jessie Nunnelee, Chairman of Board of Registrars of Montgomery County, Alabama, of date of January 6th, 1936 copy of which is enclosed for your convenience.

2. Section III, subsection (d). "Any person otherwise qualified who has no legal settlement . . . shall file application in the county in which he is residing and his assistance . . . shall be paid entirely from State funds . . ." Does this mean that the State shall pay for $\frac{1}{2}$ the pension (state and county's share) with Federal government paying $\frac{1}{2}$, or that the State shall pay the whole amount of pension?

2. The answer to this question requires a consideration of legislative intent as found in the language of the act. In my opinion, the legislature passed this act in contemplation of cooperation with Federal authorities in the furtherance of a public policy of caring for aged, needy persons in the manner prescribed by the provisions of the Federal Social Security Act governing old age pensions. In my judgment, the provisions of S. B. 5397—Simpson contemplates that the "State Funds" shall compose appropriations made by the legislature to match Federal funds, and the Federal funds granted to the state. It is, therefore, my opinion that the legislature intended that one-half (1-2) of the payment here mentioned be Federal funds.

3. Section III (e). "Nor shall any pension and pensions to any family exceed \$360.00 annually". Does this mean that regardless of whether one or six eligible persons live in one family only \$360.00 in pensions could be granted?

In this subsection should not a family be interpreted to mean related household?

3. In my opinion, this provision contemplated only the related members of a household and members of the "family". The ordinary meaning of the word family as defined in Webster's International Dictionary means "a group of persons consisting of parents and children". The use of the word family in this statute is intended to be in the ordinary sense of the word indicating a single household closely related by blood or marriage. It is, therefore, my opinion that in contemplation of the ordinary use of the word family, the legislature intended that a single closely related household could not receive more than \$360.00 annually. In my judgment, a group of people closely related by blood or marriage could be considered as one family for the purposes of this act. The word "family" has been judicially defined as follows:

" 'Family' within the statute imposing liability for articles going to the support of families held to include wife as well as children."

"Although, in the broadest aspect, 'family' means a group of kindred persons within the meaning of the principle that services of persons in family relationship are presumed to be gratuitous, a **'family' is a collective body of persons forming one household** under one head and domestic government having reciprocal natural and moral duties to care for one another."

"Duty of town to support family of resident pauper includes only those persons whom head of family is bound by law to support."

4. Section III (h) & XIX. Is it within the law to make applications on persons living in an almshouse in order to place them in a family on Old Age Assistance?

4. In my opinion, it is within the law to take applications of persons living in almshouses. Section 3 of the above quoted act provides that:

"Old age pensions shall be payable under this Act to any person who shall comply with the requirements of this Act. : : : :"

and subsection (h) of Section 3 further provides that the pension can not be paid to a person who is receiving benefits as an inmate of any public institution, it being the apparent legislative intent that no person should receive double benefits from public funds. Section XIX of the Act provides, however, that:

"Nothing in this Act contained shall be construed as prohibiting any person now an inmate of a public institution from applying for a pension hereunder."

A person may be eligible for an old age pension in all respects other than that he is already a public charge and in such event could be removed from the almshouse and receive an old age pension after such removal but not before— his application having been approved while still an inmate of a public institution.

5. Section III (i). Would an applicant be ineligible if during the year preceding date of application he had been in jail but was not later convicted of the charge on which he was indicted?

5. The answer to this question must necessarily turn upon a definition of the word "inmate" and the legislative intent as to the use of this word in the above quoted act. Webster's International Dictionary defines "inmate" as being "one confined or kept in an institution such as an asylum, prison, or poorhouse." I do not find that the courts have judicially determined the meaning of the phrase "inmate of prison" with reference to the cause of commitment or guilt or innocence of the party incarcerated. It would appear that a natural construction of the section involved, leads to the conclusion that a party is an "inmate of a prison or jail" when he is rightfully there on commitment of a court of lawful jurisdiction.

In my judgment, therefore, an applicant would not be eligible if during the year preceding the date of application he had been in jail but was not later convicted of the charge on which he was indicted.

6. Section III (j). If an applicant were unable to find employment would that be "just cause" for failure to support spouse or children?

6. The answer to your sixth question depends upon the particular facts involved. In my judgment, the answer to this question must turn upon the question of whether or not the husband has willfully neglected or refused to support his family. In the case of *St. John v. State*, 22 Ala. App. 115, 113 So. 321, the court discussed the question of the husband's wilful neglect or refusal to support his family in the following language:

"Where there is a bona fide offer by the husband to support the wife and an effort so to do, the ability of the husband in this connection becomes a proper inquiry; that is to say, his income or financial ability should be taken in consideration for the purpose of ascertaining whether such offer is reasonable and made in good faith, or whether it is unreasonable and made for the purpose of avoiding a criminal prosecution. The result of such inquiry should control. The statute is highly penal and involves the intent of the accused. It is not a substitute for an action of divorce, and it was not designed to settle marital controversies nor to furnish relief for violations of marital obligations, except in the sole particular of requiring a husband to support or maintain his wife. The specific charge is a wilful neglect or refusal, or the failure to provide for the support and maintenance of his wife, provided he is in destitute or necessitous circumstances. No other offense is involved, and the law does not authorize or contemplate that the wife impose the conditions; in other words, a husband cannot be made a disorderly person or a criminal and be held amenable to this statute by not complying with any conditions in respect to support or maintenance which the wife may see fit to impose. We are of the opinion that the support which this statute was intended to secure is the necessities of life such as the parties have been accustomed to, and such as the husband is able to provide."

In my judgment, the question then becomes one of fact to be proven to the satisfaction of the welfare authorities. If a bona fide effort to secure employment with which to support his family be shown, in my opinion, the failure to support based upon this fact alone would not disqualify an applicant for Old-Age assistance under the terms of S. B. 397—Simpson, *supra*.

7. (a) Section IV, XVII & XIX. If confederate veterans or their widows desire, may they make application for Old Age Assistance?

(b) What part of maximum pension of \$50.00 per month for confederate veterans, after \$15.00 from Federal Government is deducted, will be paid by State? What part by county?

7. (a) In my opinion, if the confederate veterans or their widows desire, they may make application for old age assistance. Sections 4 and 17 contemplate such pensions:

"Section 4. The amount of each pension shall not be more than \$30.00 monthly, except that in the case of any person who served in and was honorably discharged from the armed forces of the United States or of the Confederate States of America in the War Between the States, the amount of each pension shall not exceed \$50.00 monthly."

"Section 17. Any person entitled to any pension under Article 1 of Chapter 55 of the Code of Alabama of 1923, as amended, (Confederate Pensions) who may also be entitled to an old age pension under the terms of this Act, shall be required to make application for a pension as herein provided. Any pension actually received by any such person under the terms of this act shall be deducted from pension due such person under the provisions of said Article 1 of Chapter 55, of the Code of Alabama of 1923, as amended, (Confederate Pensions)".

(b) In answer to your question as to the portion of the maximum pension for confederate veterans to be borne by the State and county respectively, I call your attention to Section 16 of S. B. 397—Simpson part of which provides as follows:

"The State of Alabama shall quarterly, upon requisition of the State Department, pay each county a sum in money equivalent to three-fourths of the amount estimated to be expended by the county during the ensuing three months for relief for each old age pensioner who has been granted relief under the provisions of this Act, increased or decreased, as the case may be, by any sum which for any prior quarter was greater or less than three-fourths of the amount actually expended by the County under the provisions of this Act."

The logical construction of this section leads to the conclusion that three fourths of each pension granted is to be paid by the State while one-fourth will be paid by the county governing body.

8. Section VI. Will it be legal for county governing body to sign Form DPW-10 (attached) to fulfill Section VI?

8. Form DPW-10 is as follows:

STATE OF ALABAMA

DEPARTMENT OF PUBLIC WELFARE

APPLICATION FOR OLD AGE ASSISTANCE

STATE OF ALABAMA

Application No.

Department of Public Welfare

Date Received

Received by

COUNTY

I. (1) Name _____ (2) Address _____
 (Surname) (First) (Middle)
 (3) P. O. Address _____

II. (1) Date of birth _____ (2) Place of birth _____
 Month Day Year
 (3) Race _____
 (4) If foreign born, are you an American citizen _____
 (5) When were you naturalized _____

III. Marital Status (check which); (1) Married (), (2) Single (),
 (3) Widow (), (4) Widower (), (5) Divorced (), (6) Separated (),
 (7) If widowed, how long _____ (8) If divorced, when _____ (9) If married,
 give following information regarding spouse:

Name	Address	Age	Date Married	Place
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

IV. (1) Have you ever been imprisoned for a felony _____
 (2) If so, when _____ (3) Where _____

V. Place of Residence for past ten years:

City and County	From	To
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

4.
5.
6.
7.
8.
9.
10.

VI. (1) General state of health

(2) Are you deaf..... (3) Blind (4) Crippled

(5) Otherwise incapacitated..... (6) Give nature and extent of
incapacitation

(7) Illnesses during past year

(8) Was hospitalization necessary.....

(9) Name of hospital.....

(10) Name of attending physician

(11) Address

(12) History (if any) of care of mental illness

VIII. List all living parents, brothers, sisters, children and grandchildren
over 21:

Name	Address	Age	Kinship	Marital Status	Number of Dependent Children
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- VII. (1) Do you or spouse own any property.....
 (2) If so, give following information:

Real Estate	Value	Is it Assessed for Taxation	Mortgage or Indebtedness
-------------	-------	--------------------------------	-----------------------------

By whom held or to whom owing:

- (3) Do you have any bank accounts..... (4) Total

Amount \$..... (5) Name of Banks.....

..... (6) Personal Property:

- (7) Kind.....

- (8) Value \$..... (9) Insurance: List of policies of
 applicant and spouse:

Policy Holder	Company	Kind	Number of Policy	Value of Policy
---------------	---------	------	------------------	-----------------

Premium

To Whom is Policy Payable

Amount, Period, By Whom Paid

- (10) Indebtedness: (Other than above stated):

(11) Total \$.....

(12) For what incurred.....

(13) To whom owing.....

(14) List of any property disposed of in last five years by applicant or spouse:

Property Sold	Date of Sale	Amount Realized from Sale
---------------	--------------	---------------------------

(15) Pension or other compensation: (16) U. S. Government

Pension, \$_____per month; (17) Confederate Pension \$_____

per month; (18) Other Pension (specify)_____

\$_____ per month. (19) Is applicant a war veteran

_____, (20) widow of a war veteran_____, (21) Parent of a war

veteran _____

(22) If so, names of such veterans _____

IX. OCCUPATION: (1) Usual in past _____

Give type of work and kind

_____ (2) When last so employed _____
of industry

of industry

(3) At what work most regularly employed during past year _____

(4) By whom so

employed _____ **(5) Address** _____

(6) Has past year's work been regular (), (7) Irregular (), (8) Full Time ()

(9) Part time (), (Indicate which).

(10) Total earnings past year \$_____ (11) Is employment

likely to continue_____ Probable earnings coming year \$_____

I am fully informed of the contents of this application and know that making false statements or misrepresentations on my part or on the part of others to support my application constitutes a violation of the law with penalties fixed therefor.

DATE , 19 .

Signature of Applicant.

X. VERIFICATION: How were following confirmed?

- (1) Birth date - item II. (1)
- (2) Birth place - item II. (2)
- (3) Citizenship - item II (4)-(5)
- (4) Residence - item V
- (5) Marital status - item III (1)-(9)
- (6) Prison Record - item IV (1)-(3)
- (7) Health - item VI (1)-(12)
- (8) Previous assistance - item XIV
- (9) Employment - item IX (1)-(12)
- (10) Relatives unable to assist - item VII & XI

No.

Reason

(11) Financial Data: item VIII (1)-(22)

- Property
- Bank Accounts
- Insurance
- Pensions
- Indebtedness

XI. Members of Household (Relatives and others)

Name	Address	Kinship	Age
1.			
2.			
3.			
4.			
5.			

XII. (1) Year applicant last voted.....

- (2) Election precinct.....
- (3) Box No.....
- (4) Has spouse made application.....
- (5) Are present living arrangements suitable.....
- (6) Proposed living arrangements.....

XIII. (1) APPROXIMATION OF MONTHLY EXPENDITURES:

	(A) Usual During Past Year	(B) Estimate for Ensuing Year
Rent	\$	\$
Food		
Fuel		
Light		
Board		
Clothing		
Insurance		
Taxes		

Interest .....	.....	.....
Property .....	.....	.....
Upkeep .....	.....	.....
Property Payments .....	.....	.....
Indebtedness .....	.....	.....
Medical care .....	.....	.....
Incidentals .....	.....	.....
Total	\$	\$
Total of XIII-2 B .....	.....	\$ .....
Amount of old age assistance needed .....	.....	\$ .....

(2) SOURCE AND APPROXIMATE AMOUNT OF MONTHLY INCOME:

	During Past Year	Estimate for Ensuing Year
Wages	\$	\$
Property Income		
Children		
Spouse		
Other relatives		
Friends		
Church Fraternal Organizations		
Public Relief		
(County state or federal)		
Total	\$	\$

XIV. Record of previous assistance: (Organizations, churches or friends giving assistance in the past year.)

Names	Addresses	Kind of Service	Amount of Relief	If application is granted, will Service Continue.
-------	-----------	-----------------	------------------	---

1. _____
2. _____
3. _____
4. _____
5. _____

XV. Conclusion of worker making investigation:

- (1) Is applicant eligible? _____
- (2) Needs: Amount \$ _____ per month
- (3) Method of payment _____
- (4) Service needs _____
- (5) If ineligible, give reasons: _____

Signature of worker _____

Date _____, 19 _____

XVI. DECISION OF COUNTY DEPARTMENT OF PUBLIC WELFARE:

- (1) Old age assistance denied for following reasons _____

- (2) Old age assistance granted to the amount of
\$ _____ per month (3) Beginning _____
_____, 19 _____ (4) To be paid _____

- manner of payment _____
- (5) Was property required to be transferred to the county? _____
- (6) Service to be rendered (if possible) by _____
- (7) Remarks _____

(8) Approved by county governing body _____ Date _____

_____, 193_____.

XVII. (1) Written notice of decision sent _____, 19_____
Date _____

(2) Copy of report sent to State Department of Public Welfare _____

_____, 19_____
Date _____

Signed _____
Director of Public Welfare.

County _____

You ask if the county governing body may legally sign Form DPW-10 quoted supra. In reply, I wish to advise that I find no set place for the county governing body to sign this form which is the application for old-age assistance. I do find that a blank for the date of approval by the county governing body is provided, and I therefore assume that you mean to inquire concerning the authority of the county governing body to approve this application form.

In my opinion, the county governing body has sufficient authority to approve or disapprove applications for old-age assistance, conferred by Section VI of the Act in question. I find no features of the application quoted supra, that, in my opinion, violate any of the provisions of S. B. 397 - Simpson. Section 5 of the above referred to Senate Bill confers sufficient authority for the questions contained in the application.

9. Section VI. Is it necessary for county governing body to notify applicant of its approval of application before State Department of Public Welfare gives its approval?

9. Section VI provides that:

"Notice of the action taken by the county governing body on an application (for old-age pension) shall be given the applicant in writing by registered letter, return receipt requested, mailed to him at the address given on his application."

Section VI, supra, provides in part as follows:

"Said letter of notice shall be mailed to the applicant not more than five days after the county governing body shall have taken action."

Accordingly, the State Department may give its approval at any time before or after notice is given to the applicant, but such notice **must** be

given by the County Department within five days from date of action on the application.

10. Section V & VI. Is it necessary for County Director to submit applications which she disapproves to county governing body for its confirmation of her decision?

10. It is necessary for the County Director to submit applications which are disapproved to the county governing body for its confirmation. I call your attention to Section 5 which provides in part as follows:

"The County Director shall certify his finding and recommended award in each case to the county governing body which shall within thirty days thereafter, upon such additional investigation or hearing, if any, as it deems necessary, either approve, disapprove, or amend such finding or recommend award."

11. Section VII. May State Board appoint staff members of State Department to act as court of appeals?

11. Section VII provides in part as follows:

"In the review of any disallowance or an application or of an award or modification thereof, the State Department may act through its Board or through any three members thereof designated by its chairman or other presiding officer."

It will be seen that the State Board may appoint staff members of the State Department to act as a court of appeals only when such "staff members" are members of the Board.

12. Section VII. In instances where an appeal from applicant is taken to State Department, may the State Department increase amount of pension?

Is it mandatory that the county governing body pay $\frac{1}{4}$ of the total pension the State Department approves in cases of appeal by applicant?

12. Section VIII provides that:

"No decision of the State Department shall increase the award made by a County governing body except in a case where under the provisions of Section 7 hereof the applicant has demanded a review of the award."

Pertinent parts of Section VII provides as follows:

"(a) In the event an application is denied or the amount or terms of award or any modification thereof be deemed inadequate or unjust by the applicant, the applicant affected may demand a review of his

case before the State Department by filing his written request for such review with such county governing body not more than sixty days after notice of its action, such governing body shall thereupon certify its records and data on the case, including the records of the County Department, and such additional information as it deems relevant, to the State Department, which Department shall promptly grant a hearing upon such application."

"(b) At this hearing any party at interest may appear and present any relevant facts. The State Department shall make such additional investigation as it may deem necessary and shall certify its finding and award on the case back to the county governing body concerned and such finding and award shall thereupon become final and effective as of such date as the State Department shall fix."

Premises considered, where an appeal by an applicant is taken to the State Department, this department may increase the amount of pension and such finding and award shall be final as provided by Section VII and VIII, supra, and it is mandatory that the county governing body pay one fourth of the amount approved by the State Department.

13. Section VIII. Is State Department to review all disallowances as made by county governing body but not necessarily the applications disapproved by the County Director?

13. The thirteenth inquiry should be answered in the negative. Section VII of the above named act provides that:

" . . . the applicant affected may demand a review of his case before the State Department. . . . "

Section VII provides in part that:

"It shall be the duty of the State Department to review all disallowances of applications and all awards and modifications of awards made by the county governing body of each county."

14. Section VIII. May State Department, after review of applications presented by county governing body, decrease but not increase the amount of pension approved by county governing body?

14. Section VIII provides in part as follows:

"The State Department may at any time upon its own motion, after notice to the applicant and to the county governing body and due opportunity for a hearing, make such decision as to the granting of any pension and the amount and terms thereof as in its opinion is justified. . . . "

Accordingly, the State Department after review of applications presented by the county governing body, may in my judgment, increase or decrease the amount approved by such county governing body.

15. Section IX. May the county governing body upon recommendation of County Director increase or decrease amount of pension at beginning of each annual appropriation for Old Age Assistance?

15. Subject to the appeal and review provided for in Sections 7 and 8, the county governing body is given the authority by Section 9 upon the recommendation of the County Director to increase or decrease the amount of the pension at the beginning of any annual appropriation for old age assistance.

16. (a) Section X. May county governing body, after investigation by County Director, decrease amount of pension at any time?

(b) May county governing body increase amount of pension if at any time it seems necessary to welfare and health of applicant?

16. (a) Your sixteenth inquiry depends upon a construction of Section 10. This section provides:

"If at any time the recipient of an old age pension, or the husband or wife of such recipient, shall become possessed of any property or income in excess of that owned or being received at the date of the application or if at any time any relative of the recipient responsible in law for his support, becomes able to support the recipient, in whole or in part, it shall be the duty of the recipient immediately to notify the County governing body in writing of the facts in the case. The County governing body upon such notification or upon otherwise learning the facts, shall, after investigation, continue, reduce or cancel the amount of the pension as the facts may warrant. Its action in this respect shall be subject to appeal and review as provided in Sections 7 and 8 above."

It is to be seen from this section that the county governing body may decrease the amount of the pension at such times as provided by such section.

(b) The county governing body may increase the amount of pension necessary to the welfare and health of the applicant only in those instances set out in Section 19 which in substance is as follows:

"In the event an applicant for a pension hereunder is so physically incapacitated that it is necessary for him to be hospitalized, the county is authorized to make such arrangements as are necessary to secure hospitalization, even though the amount to be expended exceeds the maximum pensions allowable to the applicant hereunder, but the amount to be reimbursed the county by the State shall be computed as though the amount paid such pensioner should not exceed such maximum."

17. Section XIII. May State Department require county governing body to keep any records of disbursements and receipts and to make any reports on same as the State Department sees fit?

17. The State Department may require the county governing body to keep such records of disbursements and receipts for old age pensions in such

manner and upon such forms as the State Department may require, and that reports of such receipts and disbursements shall be made at such time as the State Department may require—provided, of course, that the county governing body shall make such reports annually only. See Section 13.

18. Section XIV. May State Department limit duties to be exacted of County Director by county governing body?

18. Your eighteenth inquiry should be answered in the negative. Section 14 provides that:

"The County Director shall perform the duties herein specified and such other duties in the administration of this Act as the County Governing board may from time to time designate. . . ."

Accordingly, while the State Department may designate additional duties of the County Director, this department may not limit the duties of such director specifically prescribed by the Act.

19. Section XV. May the State Department set up any additional rules and regulations not in conflict with Act 448, which it sees fit? Are such regulations binding upon all persons connected with administration of Act 448?

19. In reply to your question 19, in my judgment, the State Department of Public Welfare is authorized through the State Board in conference with the Commission to adopt policies, rules and regulations for its government and for the administration and supervision of all forms of public assistance in Alabama. I refer you to S. B. 365 - Walton, Section 4 which provides in part as follows:

"The State Board, in conference with the Commissioner, shall be responsible for the adoption of policies, rules and regulations for its government and for the government of the State Department; all administrative and executive duties and responsibilities of the State Department shall be performed by the Commissioner, subject to the authority of the State Board. Also the Commissioner shall be responsible for the interpretation of policies, rules and regulations formulated by the State Board of Public Welfare hereafter created."

and to section 8 of S. B. 365 - Walton which provides in part as follows:

"The aim of the State Department shall be the promotion of a unified development of the Welfare activities and agencies of the State and of the local governments so that each agency and each governmental institution shall function as an integral part of a general system. In order to carry out effectually these aims it shall be the duty of and responsibility of the State Department to: (1) Administer or supervise all forms of public assistance including general home relief, outdoor and indoor care of persons in need of assistance, and old age pensions, also including those duties that have to do primarily with the determination of need and authorization of relief now performed by the Alabama Relief Administration."

I wish to further refer you to Section 15, S. B. 397 - Simpson which provides in part as follows:

"The State Department shall supervise the administration of old age pensions under this Act. . . . The State Department shall make rules and regulations necessary for the carrying out of the provisions of this Act to the end that old age pensions may be administered uniformly throughout the State, having regard for the varying costs of living in different parts of the State, and that the spirit and purpose of this Act may be compiled with. **All such rules and regulations made by the State Department shall be binding upon its agents and subordinates and all others charged by law with the administration of this Act in this State.**"

Premises considered, it is, therefore, my opinion that your nineteenth question should be answered in the affirmative.

20. Section XVI. After confederate pensions are paid from the one mill tax provided in Article 1 of Chapter 55 of the Code of Alabama of 1923, as amended, will Old Age Pensions be a prior claim against said fund?

20. After all Confederate pensions are paid from the one mill tax provided in Article 1 of Chapter 55 of the Code of Alabama of 1923, as amended, old age pensions are a preferred claim against such fund. Section 16 provides that:

"The funds for one third of such payment shall be those arising from the one mill tax now devoted by law to the payment of the pensions provided for by Art. 1 of Chapter 55, of the Code of Ala. of 1923 as amended (Confederate pensions) and remaining after the payment of all charges against said funds for the payment of said pensions as now provided for by Art. 1 of Chap. 55 of the Code of Ala. 1923, as amended (Confederate pensions) which said Confederate pensions, in their entirety shall remain a prior, paramount and first charges against said funds."

21. (a) Section XVII. Under what circumstances could a confederate veteran be eligible for Old Age Pension.

(b) If such veteran is not drawing a confederate pension and would be eligible for Old Age Assistance, is it the duty of the State Department to make application for Old Age Assistance, for said man after March 1, 1936 whether he wishes it or not?

21 (a) A confederate veteran is eligible for old age pension when properly qualified under the terms of Act 448 upon his application for pension as therein provided.

(b) In my opinion, the provisions of Section 17 of the Act in question command that the "Board" make application for those confederate veterans who are drawing confederate pensions, who are eligible for old-age pensions and fail or refuse to apply for the said old-age pension. I find no

commands of this Act concerning confederate veterans who are not drawing confederate pensions.

22. Section XVI. In the event a surplus or deficiency occurs in State funds to be apportioned to counties, does State Department have the authority to apportion money to counties according to number of persons eligible in each county? If not how shall such money be apportioned?

22. In the event a surplus or deficiency occurs in the State funds to be apportioned to counties, the State Department does not have the authority to apportion money to the counties according to the number of persons eligible in each county. The apportionment should be made as provided for by Sec. 16, S. B. 397 - Simpson, supra:

" in sums bearing such proportion to the whole surplus and other funds available to be divided as the total due each County bears to the total due all counties."

23. (a) Section XVIII. What portion of the Federal grant for administration is to the State for administration?

(b) What portion to the counties?

(c) On what basis is this sum for administration to be allocated to the counties?

23. The apportionment of the funds allotted to the State by the Federal Government is provided for by Section 18 of the Act in question as follows:

"The funds allotted to the State by the Federal Social Security Board under Section 3 (a) (2) of the Title 1 of the Social Security Act or any Act amendatory thereof, and received by the State from the United States shall be used for the administration of this Act by the State Department and the County Departments and shall be apportioned by the State Department in the following manner: (1) One-half of such funds shall be apportioned to the State Department; (2) one-half of such funds shall be apportioned to the several County Departments in the proportion to the estimate of the County Board of the total sums to be expended by their counties for old age pensions in the next quarter, reduced or increased, as the case may be, in proportion to any sum which the State Board finds that any County Board in its estimate for any prior quarter or less than the amount actually paid in old age pensions. The State of Alabama shall pay to the County Departments the amounts so apportioned at such times and under such rules relative to such payment as may be prescribed by the State Department."

24. Section XIX. In the event it seems to advantage of recipient of pension to hospitalize him and the cost of hospitalization exceeds \$30.00, what is maximum amount state can contribute to this?

24. In the event it becomes necessary for the recipient for a pension to be hospitalized, because of physical incapacitation and the cost of hospitalization exceeds \$30.00, the State must, nevertheless, reimburse the county for three-fourths of the necessary pension "as though the amount paid such pensioner did not exceed such maximum." See Sec. 19 of the Act quoted.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 10, 1936

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Phenix City, Alabama.

Non-resident may not purchase resident hunting license even though he owns land in Alabama.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of January 6, 1936, stating:

"Please advise me as follows: Where a non-resident owns property in this state and pays taxes on same will he be entitled to a Resident State Hunting License."

Replying to your inquiry, advise that a non-resident would not be entitled to secure a resident hunting license even though he owns land in Alabama.

Section 34 of an Act approved August 12, 1935, provides:

"Any person who hunts on lands other than he owns and permanently resides thereon, or rents or leases strictly for growing agricultural crops as a means of a livelihood and resides on such lands, without first obtaining a county hunting license, permitting him or her to do so, or who hunts outside of the county in which he **actually resides** without first obtaining a State hunting license, permitting him or her to do so; or any non-resident of the State who hunts in this State, without first obtaining a non-resident hunting license, permitting him or her to do so; or who lends or transfers his or her hunting license to another, shall be guilty of a misdemeanor * * * *".

Section 30 of said Act provides that "any person who has been a bona fide resident of the State for six months next preceding may procure a State

hunting license for himself or herself " And Section 31 of said Act provides that any non-resident of this State may procure an annual license upon paying a fee of \$25.00.

Mere ownership of land, therefore, does not meet the requirements of this Act, and a person would not be entitled to a resident hunting license unless and until he meets the resident requirements.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 10, 1936

Hon. George Pearce,
Tax Collector, Marion County,
Hamilton, Alabama.

Drainage Districts -- Drainage taxes collected by County Tax Collector should be covered into the County Treasury.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for an opinion dated January 7, 1936, which is as follows:

"Please advise me to whom I must remit taxes collected from Drainage Dist No. 4, Marion County, Alabama."

It is assumed that Drainage District No. 4 of Marion County, is established and organized under the provisions of the Constitutional amendment proposed by Acts of 1927, p. 346, adopted at the General Election of 1928, (see *Sims v. Tigrett*, 158 So. 326) which validated the Drainage Act of 1915 (Acts 1915, p. 167).

Section 35 of the last cited statute, provides in part:

*** It shall be the duty of the sheriff or tax collector to pay over to the county treasurer promptly the money so collected by him upon said tax assessments, to the end that the said treasurer may have funds in his hand to meet the payment of interest and principal due upon the outstanding bonds as they mature. It shall be the duty of the county treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to said bonds, and also to pay the annual installment of the principal due on said bonds at the time and place as evidenced by said bonds.***"

In my opinion, the taxes collected by you as Tax Collector, should be covered into the County Treasury, as provided by the validated Drainage Act of 1915, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 12, 1936

Dr. A. H. Collins,
Commissioner of Public Welfare,
Montgomery, Alabama.

Public Welfare Department—

Confederate Veterans—

1. Persons eligible to receive Old Age Pensions and who are receiving Confederate Veteran's Pensions are required to file application for Old Age Pension.

2. Amount received from Old Age Pension must be deducted from amount received from Confederate Veteran's Pension provided that Confederate Veteran pensioner may not receive less than amount prescribed by law.

Opinion by Assistant Attorney General Small

Dear Sir:

I have your letter of January 28, 1936 in which you request my opinion as follows:

"An urgent matter has arisen concerning the Old Age Assistance Law, Act No. 448. We would, therefore, appreciate having your opinion on this matter at your earliest convenience.

"Does Alabama Act No. 448, General Acts of Alabama, 1935, make it mandatory that present recipients of Confederate Pensions apply to the County Department of Public Welfare for Old Age Assistance or may such recipients continue to receive their pensions from State funds through the State Auditor?"

In reply, I wish to advise that, in my opinion, any person receiving a Confederate Veteran's Pension, who is also eligible for an Old Age Pension under the terms of S. B. 397-Simpson, is required to make application for said Old Age Pension. I find no authority of law preventing persons entitled to Confederate Veterans pensions from continuing to receive the same from the State Auditor, except that such amount as may be paid to said

pensioners as an Old-Age pension shall be deducted from the amount paid as a Confederate Veteran's pension. I refer you to Section 17 of S. B. 397-Simpson, approved September 14, 1935, which provides as follows:

"Section 17. Any person entitled to any pension under Article 1 of Chapter 55 of the Code of Alabama of 1923, as amended, (Confederate Pensions) who may also be entitled to an old age pension under the terms of this Act, shall be required to make application for a pension as herein provided. Any pension actually received by any such person under the terms of this act shall be deducted from the pension due such person under the provisions of said Article 1 of Chapter 55, of the Code of Alabama of 1923, as amended, (Confederate Pensions). If any such person shall fail to make such application hereunder on or before March 1, 1936, the State Department shall as soon as practicable thereafter, make application on his behalf in the county wherein he resides, and such application shall thereupon be heard and passed upon as if filed by such person himself. Nothing herein contained however shall ever under any circumstances be construed or allowed to cause a Confederate Veteran or widow to receive less than he would, but for the passage of this Act."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 13, 1936

Hon. R. B. Carr,
Judge of the Seventh Judicial Circuit,
Secretary, Association of Circuit Judges,
Anniston, Alabama.

Statutes—provision of Acts 1932, p. 301, for expense allowance to Circuit Judges and Circuit Solicitors not repealed by Acts 1933, p. 124.

Officers—Circuit Judges and Circuit Solicitors entitled to expense allowance provided by Acts 1932, p. 301, from effective date of said Act.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Receipt is acknowledged of your request for opinion as follows:

"Acts of 1932, extra session, at page 301, provide as follows:

" 'Provided, however, that Circuit Judges and Circuit Solicitors in judicial circuits of more than one county shall each receive the sum of \$100.00 per annum for each county of their judicial circuit over and above one and the said additional amounts to be a reimbursement of their reasonable expenses while in attendance on court outside of their home county.' "

"So far as I am advised this was never paid to any of the Circuit Judges or Solicitors affected. Acts of 1933, extra session, at page 126, provide

"The salary of every Circuit Judge in the State shall be \$4,000.00'.

"The question has been raised by several members of the Association of Circuit Judges in the state and I am writing you as Secretary of the Association to get your opinion on:

"(1) Whether or not this expense allowance as provided in the above act was repealed by the passage of the Act of 1933 which reduced the salaries of Circuit Judges to \$4,000.00.

"(2) Acts of 1932, extra, session, at page 301, was approved November 5th, 1932. The Act of 1933, extra session, at page 124, was approved April 14th, 1933. If the Act of 1933, extra session, at page 124, repealed the Act of 1932, extra session, at page 301, was this expense allowance payable to the Judges and Solicitors affected between the date of approval of the above two acts?

"(3) If the Acts of 1933, special session, at page 126, did not repeal the Acts of 1932, extra session, at page 301, when did the expense allowance as provided in said Act become effective,—that is, whether on the date of approval of said act or at the beginning of the next term of the officials affected.

"(4) If this expense allowance should be paid to the officials affected, what are the necessary steps to be taken to secure said payment?"

Answering your first inquiry, it is my opinion that that part of Acts 1932, page 301, which provides for expense allowance for Circuit Judges and Circuit Solicitors was not repealed by Acts 1933, page 126.

The repeal of a statute by implication is not favored. 25 Ala. and So. Dig. Title "Statutes" Key No. 159.

However, if the new statute covers the entire field, is repugnant to the provisions of the old statute and evidently is intended as a substitute for it, the new enactment repeals the old statute even though it may contain no express words of repeal. But the rule which, in my opinion, controls the present inquiry, has been declared by the Supreme Court in *Levy v. Jones*, 208 Ala. 104, as follows:

"If effect can, however, be given, consistent with the legislative intent, to a part of the provisions of the old statute, without violation of the provisions of the new, repeal by implication of the old statute by the new will be held to be only partial — to the extent of the modification of the conflict."

The Act of 1932, *supra*, provides the general formula for reduction of "compensation for services performed for the State as salary or compensa-

tion," therefore fixed by law for officers and employees receiving more than \$1200.00 per annum. It makes an exception from the formula for the reduction in the case of the "allowance" to Circuit Judges and Circuit Solicitors therein referred to by fixing said allowance on the basis of a stated sum per county in excess of one, included in the judicial circuit.

The 1933 Act, *supra*, does not undertake to deal with this "Allowance" to Circuit Judges and Circuit Solicitors. It merely operates to fix their salaries. It provides:

"That the annual salaries of the officers and employees of the State of Alabama, hereinafter named, shall be the amounts hereinafter set opposite the respective offices, positions and employments, and shall be payable in equal monthly installments, viz:

"The salary of every Circuit Judge in this State shall be \$4,600.00. The salary for the Solicitor for each Judicial Circuit, except the Bessemer Division of the 10th Judicial Circuit, shall be \$3000. The salary Circuit Solicitor 10th Judicial Circuit. Bessemer Division \$1,500. The salary of the First Deputy Circuit Solicitor for the 10th Judicial Circuit shall be \$2,100.00, the salaries of the second and third Deputy Circuit Solicitors for the 10th Judicial Circuit shall be (each) \$1,500, the salary of the Deputy Circuit Solicitor for the 10th Judicial Circuit Bessemer Division shall be \$900.000. The salary of the Assistant Circuit Solicitor of the 15th Judicial Circuit shall be \$1,080.00. The salaries herein provided for the Circuit Judges and Solicitors or Deputy Solicitors or Assistant Solicitors is the amount of portion thereof to be paid by the State and nothing herein shall be construed to affect any provision of the law for the payment by any County of any additional amount of salary to any such officer or officers."

Of course, as to the salary of the Circuit Judges and Solicitors, the 1933 Act repeals the 1932 Act. But the provision in the 1932 Act for "allowances" to these officers, was not affected by the 1933 Act nor by any other provision of law which has come to my attention, and the same is still in force.

In this connection, the distinction between "salary" or "compensation" and "allowances for expenses" must be kept in mind. As employed by legislative bodies and as defined by the Courts the two terms relate to wholly different things.

See *Osborne v. Henry*, 200 Ala. 353, (H. N. 2) and cases there cited.

In *Ex Parte Pickett*, 24 Ala. 91, and in *Hall vs. Blain*, 227 Ala. 64, the Supreme Court held that the "pay" of members of the Legislature provided (in the first cited case) by Section 43 of the Code of 1852, and that (in the last cited case) later fixed by Section 49 of the Constitution of 1901, included Compensation for the services of the members and reimbursement for their expenses during the period they were required to be absent from the homes in the performance of their official duties. But the rule laid down in these cases is not applicable here.

In the *Pickett* case, the Court was construing a section of the Code of 1852, which was couched in language wholly different from that employed

by the Legislature in the Act of 1932 and 1933, hereinabove quoted; and in the Hall case, the Court had under consideration, the effect of Section 49 of the Constitution of 1901 as a limitation upon the "power" of the Legislature to increase the "pay" of its members.

There is no constitutional limitation upon the power of the Legislature to provide for the traveling or incidental expenses of Circuit Judges and Circuit Solicitors.

Cf. Hall v. Blan, (h. n. 1) Supra;

See also Constitution of 1901, Sections 150 and 167.

In Woodruff v Beeland, 220 Ala. 652, the Supreme Court had under consideration the power of a County Board of Education to make an allowance for expenses to a County Superintendent of Education. Whether such an "expense allowance" was a part of the Superintendent's salary, was not decided, - the case going off upon another point. In so far as I am advised, there is no direct decision of our Supreme Court upon the precise question. However, other jurisdictions have decided it.

In Macon County v. Williams, 224 S. W. 835, the Court of last resort of Missouri had up for decision the question whether a statutory allowance to Circuit Judges, while engaged in holding court in counties of their circuits other than that of their respective residences, was a part of the "compensation" of such officers within the meaning of a provision of a statute of that State.

The conclusion of the Court that such an expense allowance was not within the contemplation of the term "compensation," as the same was used in the statute, is well supported by citation in the opinion of decisions of the Courts of last resort of other States and of the United States. The opinion in the case from the last named Court, (Smith v. Jackson, 246 U. S. 388, 38 S. C. 353, 62 L. Ed. 788), was merely the adoption of that of a learned Alabama trial judge, the late Judge Henry D. Clayton of the Middle and Northern Districts of Alabama. (See 241 Fed. 747). Judge Clayton's reasoning there is, in my opinion, peculiarly apt here.

An answer to your second inquiry is unnecessary, in as much as the answer to the first question disposes of the same.

In my opinion, the effective date of the 1932 Act, supra, and not the beginning of the succeeding terms of the respective officers, is the criterion as to time of accrual of the claims for the allowances provided for by said statute.

In view of Section 150 of the Constitution, this would be true as to the allowances to Circuit Judges, even conceding that the said allowance was held to be a part of the "salary" of such officers.

Stone v. State, 20 Ala. App. 69, and cases there cited.

But, in such event, the allowance to Circuit Solicitors could not be made effective to increase their compensation during their respective terms of office.

Cf. Brandon, Auditor vs. Askew, 178 Ala. 160.

However, as appears hereinabove, in my opinion these expense allowances have no relation to the "allowances, fees or compensation" of either the Judges or Solicitors, and neither Section 68 nor 281 of the Constitution is applicable.

Answering your fourth inquiry, it is my opinion that a request to the State Comptroller, for payment of the allowance due is the proper procedure to secure such payment.

In this connection, your attention is directed to the rule that the fixing by the Legislature of the salary of a public officer holding for a definite term operates as an effective appropriation of the sum so fixed.

Nichols v. Comptroller, 4 Stew. P. 154.

Riggs v. Brewer, 64 Ala. 282;

State v. Smith, Auditor, 188 Ala. 432; 66 So. 61.

In my opinion, by analogy, this rule applies to the allowances to Circuit Judges and Circuit Solicitors fixed by Acts 1932. Supra.

As to the portion of the allowance accrued in any prior fiscal year, the same probably should be paid from any funds in the State Treasury not otherwise appropriated; and as to the portion thereof accruing in the current fiscal year, and hereafter accruing, the appropriation is made by the 1932 Act, supra, fixing the amount thereof.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 14, 1936

Mrs. Mary H. Fowler, Superintendent,
State Training School for Girls,
Box 38, West End,
Birmingham, Alabama.

Juvenile Court—Has jurisdiction under Section 3539 of the Code of 1923 to commit delinquent girls over sixteen and under eighteen years of age to the State Training School for Girls.

Opinion by Assistant Attorney General Rowe.

Dear Madam:

I have your request for opinion dated December 17, 1935, as follows:

"I would appreciate an opinion from you regarding a commitment of a female child, Clemmie Smith, who is between the ages of sixteen and seventeen years, to the State Training School for Girls.

"The Probate Judge of Wilcox County, Alabama wishes to commit this child to the State Training School for Girls and has asked me to receive said child into said institution on said commitment. It has been suggested to me that a female child of over 16 years of age cannot be committed to the State Training School for Girls.

"I note that the words 'delinquent child' are defined under Section 3528, Par. 3, of Ch. 1, Art. 1 of the Code of Alabama of 1923. I also note that under General Acts of the State of Alabama, 1931, page 277, section 5, an Act creating the State Training School for Girls, the following is set forth: No girl under the age of 12 years or over the age of 18 years shall be committed to the State Training School for Girls.

"It appears to me that, unless there is some other law covering the subject matter, these two sections of the law conflict with each other.

"This is a very important matter to the State Training School for Girls, as we have lots of applications for the commitment of girls who are over sixteen years of age and under eighteen years of age, and I would like for you to tell me whether or not a girl between the ages of sixteen and eighteen can be legally committed to the State Training School for Girls by the Juvenile Courts of the several counties of the State of Alabama or by any court having jurisdiction over children.

"I understand that the Probate Court of Wilcox County did not have jurisdiction over said child before she was sixteen years of age, but wishes to file a petition now and place the girl in the Training School."

In my opinion, the Juvenile Court of Wilcox County or any Court in said County exercising juvenile jurisdiction as provided by Section 100 of the Code of 1923, as amended by Acts 1931, pages 353 et. seq. (Chapter 100 1932 Sup. to the Alabama Code of 1928, Ann.) has full power and jurisdiction to commit a juvenile delinquent over the age of sixteen years and under the age of eighteen years to the State Training School for Girls or to make such other or further disposition of the custody of said juvenile delinquent as may to the court seem meet and proper.

Although the statute, *supra*, generally defines "dependent children", "neglected children" and "delinquent children" as those under the age of sixteen years who come within the terms thereof, your attention is particularly invited to Section 3539 of the Code of Alabama, 1923, as follows:

"Nothing in the Chapter shall be construed as forbidding the arrest, with or without warrant, of any child as is now or may hereafter be provided by law, or as forbidding the issuance of warrants by magistrates as provided by law. Whenever a child under sixteen years of age is brought before a magistrate of any court in the county other than the juvenile court, charged with any offense, such magistrate or court shall forthwith, by proper order, transfer the case to the juvenile court of the county. Any criminal court or any court exercising criminal jurisdiction in any county coming under the provisions of this chapter before which any child between the ages of sixteen and eighteen years is brought, charged with the commission of a crime, shall have authority, if such court shall deem it to be in the interest of justice and of the public welfare, to in like manner transfer such child by proper order to the jurisdiction of the juvenile court of said county to be dealt with as a delinquent child under the terms of this chapter and when so transferred such child shall come under all terms and conditions of this chapter and be so dealt with as other children are dealt with under this chapter. All information, depositions, warrants and other processes in the hands of such magistrate or court shall be by him or by the judge of said court forthwith transmitted to the juvenile court and shall become a part of the records of the juvenile court. The juvenile court shall thereupon have jurisdiction of the cause and shall proceed to hear and determine the case so transferred to it, in the same manner as if the proceedings had been instituted in the juvenile court by petition as hereinbefore provided."

See also Powell et al v. State, 141 So. p. 201.

Under the above quoted provision "any Criminal Court or Court exercising criminal jurisdiction, before which any child between the ages of sixteen and eighteen years is brought **charged with commission of a crime**, shall have authority, if such court shall deem it to be in the interest of justice and of public welfare, to, in like manner, transfer such child by proper order, to the jurisdiction of the Juvenile Court of such county, to be dealt with as a delinquent child, under the terms of the Chapter governing delinquent children; and when so transferred, such child shall come under all of the provisions of the statute dealing with such delinquents."

This provision is ample to cover the situation in your letter.

If the child, Clemmie Smith, is arrested on a warrant of a Justice of the Peace, or the process of any other court exercising criminal jurisdiction, the magistrate or judge may, if he deems it proper, transfer the cause to the Court in Wilcox County which has and exercises juvenile court jurisdiction.

Under Section 5 of the State Training School Act (Acts 1931, p. 272), it is specifically provided that girls over the age of twelve years and under the age of eighteen years may be committed to the said institution. The fact, if it be a fact, that the juvenile court of any county did not have jurisdiction of the child before she was sixteen years of age is not material, if said court does obtain jurisdiction prior to the time when she becomes eighteen years of age.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 17, 1936

Hon. W. F. Nall,
Custodian of County School Funds,
Pike County,
Troy, Alabama.

Schools—Act No. 60, H. 366, approved March 10, 1933, (Acts 1933, p. 51) as applicable to the County Treasurer of School Funds, appointed under Section 94 of the School Code of 1927, applies to the County Custodian of School Funds appointed under Act No. 507, S. 424, approved September 13, 1935, (Acts 1935, p. 1090).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 7, 1936, in which you request my opinion as follows:

"Do the provisions of Act No. 60, H. 366, approved March 10, 1933 (Acts 1933, p. 51) as applicable to the County Treasurer of School Funds, appointed under Section 94 of the School Code of 1927, apply to the County Custodian of School Funds, appointed under Act No. 507, S. 424, approved September 13, 1935 (Acts 1935, p. 1090)?"

I am of the opinion that your inquiry should be answered in the affirmative.

Act No. 507, S. 424, approved September 13, 1935 (Acts 1935, p. 1090) amended Section 94 of the School Code of 1927. The 1935 Act merely created the office of Custodian of County School Funds in lieu of the County Treasurer of School Funds. The functions and duties of each office are practically the same. The 1935 Act was silent as to some of the functions and duties of the office. It is necessary to refer to other provisions of law to give the 1935 Act a full field of operation. Said Act repealed only laws or parts of laws in conflict. (See Section 11.) It did not repeal any other provisions of former laws.—**Opinion of Attorney General to State Superintendent of Education on January 10, 1936.**

The question then presents itself as to whether or not the provisions of Act No. 60, H. 366, approved March 10, 1933, (Acts 1933, p. 51) as applicable to the County Treasurer of School Funds are in conflict with the 1935 Act, supra. The most pertinent part of the 1933 Act relative to this question is Section 3 of said Act, which provides as follows:

Section 3.

"Upon the application of the County Treasurer of School Funds it shall be the duty of the County Board of Education of the County to appoint a bank or trust company as a depository in which such officers may deposit monies coming into their hands as such officers; which ap-

pointment shall be by proper resolutions spread upon the minutes of such County School Board. Such County School Board shall from time to time by resolution spread upon its minutes, make such requirements as may be deemed necessary for the safety of such funds so deposited, not inconsistent with the general laws of the State."

The pertinent part of the 1935 Act *supra*, is Section 1, which provides as follows:

"Section 1. That Section 94 of the Alabama School Code of 1927 be so amended as to read as follows: 94. CUSTODIAN OF COUNTY SCHOOL FUNDS.—The county board of education shall appoint a custodian of the public school funds of the county, which custodian may be the county treasurer, the secretary to the county superintendent of education, or some other qualified person. The custodian of school funds shall give bond in a surety company authorized to do business in Alabama; shall receive and take charge of all moneys to which the county board of education may be entitled by law or which may come into its possession for public school purposes; shall pay out such moneys only on the written order of the county superintendent of education, approved by the chairman of the county board of education; shall keep an accurate record of all receipts and expenditures; and shall make such reports as may be required by law by the county board of education, or by rules and regulations of the State Board of Education. The amount of the bond of the custodian shall be fixed by the county board of education and approved by the State Board of Education through its executive officer, the State Superintendent of Education, with whom a certified copy shall be filed."

It will be seen from the above that the only variance in the two Acts is in the name of the office. By substituting County Custodian of County School Funds in lieu of County Treasurer of School Funds in the 1933 Act, *supra*, said Act has a complete field of operation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 20, 1936

Hon. Marvin Pearce, Member,
Court of County Commissioners of Marion County,
Winfield, Alabama.

1. Counties—Commissioners Courts.

Members of the Court of County Commissioners are entitled to the per diem and mileage fixed by law, when discharging their duties as members of such court whether such court be holding a regular, adjourned or special term.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Sometime ago you wrote me with reference to the compensation of members of the court of county commissioners. In substance you requested me to advise you if the members of your court were entitled to per diem and mileage for only regular terms of the court. The expression "regular terms" being limited only to the session provided by Section 6752 of the Code of 1923, said section stating:

"Regular terms of the Court are held on the second Mondays in February, May, August and November."

As I understand your letter, the claim is asserted that county commissioners may be paid for only four days per year.

You call my attention to an opinion appearing in Biennial Report 1930-32 at page 550. I call to your attention opinions appearing in Biennial Report 1928-1930 at pages 785 and 851 and also Biennial Report 1932-34 at pages 266 and 431. All of these opinions treat of the general subject. The last opinion appearing in the 1932-34 Biennial Report at page 431 was written subsequent to the 1931 amendment to Section 6771.

It seems from your letter that these opinions are being so construed to prohibit the payment of the per diem and mileage except for the four days fixed by Section 6752 for regular terms.

I do not take it that these opinions positively so hold so far as the per diem and mileage of the members when attending meeting of the court, meeting as an official body.

That the commissioners court have the right and power to hold adjourned terms, would, I think, in the absence of specific prohibition be almost inherent. However, that there is such right has been clearly recognized.

In **Matkin v. Marengo County**, 137 Ala. 155, the "orders of the Court at an adjourned term of the Court on the 9th day of July from the regular May term of said Court" were held to have been made properly.

In **Commissioners Court v. Ballard**, 64 So. 311, the Supreme Court said:

"It is insisted for appellee that the order establishing the private road in question was attempted to be made at a time other than that at which the regular terms of the commissioners' court are provided for by law (Code, Section 3310), and from this premise appellee's counsel cite a line of authority pronouncing invalid judicial acts by courts of law and equity at times and places other than those authorized by positive law. In proceedings to establish public or private roads the commissioners' courts are clothed with and exercise judicial, executive and legislative power. **Ballard v. Cook**, 166 Ala. 110, 52 So. 147. Such courts, in such matters, are not subject to the rule counsel assert. Code, Sections 5765, 5767, 5774, 5819. A reading of these Sections will also demonstrate that

the lawmakers did not intend to restrict such 'boards' in dealing with public or private roads, to the regular terms provided by law."

In *Hicks v. State*, 75 So. 636, (Ala. App.) the Court said:

"Although the powers conferred by the Act of September 22, 1915, are vested in the court of county commissioners and not the individuals constituting its personnel, yet in the exercise of its legislative functions it is not subject to the rules applied to judicial courts as to the time and place such courts must exercise strictly judicial functions. Commissioners' Court of Coffee County *v. Ballard* 185 Ala. 501, 64 South, 311; *Ballard v. Cook*, 166 Ala. 105, 52 South. 147.

"But, if such rules applied it was within the authority of the court to adjourn its terms from time to time, within its discretion, and exercise the powers at such adjourned term. *Matkin v. Marengo Co.* 137 Ala. 155, 34 South, 171.

"The Commissioners' Court being a court of 'unlimited jurisdiction' in the matter of establishing public roads, in the absence of an affirmative showing to the contrary, the presumption will be indulged that its proceedings in such matter were in all things regular. *Matkin v. Marengo County*, supra; *McLaughlin v. Hardwick*, 14 Ala. App. 570, 70 South, 305; *Stephens v. Court of Commissioners*, 180 Ala. 531, 61 South, 614.

"It appearing that the jurisdiction of the court was properly invoked by a petition to establish the road, though irregularities may appear in the proceedings, the judgment is not subject to collateral attack, *Logan v. Central Iron & Coal Co.*, 139 Ala. 548, 36 So. 729; *Golden v. State*, 10 Ala. App. 235, 64 So. 517."

Again in *Brown v. Shelby County*, 204 Ala. 253, (85 So. 416) the Supreme Court speaking through Justice Thomas said:

"That part of the minutes of the court of county commissioners, June term, 1905, reciting indebtedness to Bynum Construction Company, for the erection by that company, for the county, of the public bridge in question, and providing for the levy of a special tax to pay for the same, was competent as tending to show that the bridge was erected by authority of the court of county commissioners and by such independent contractor pursuant thereto. The June term of court was the time fixed by law (Code 1896, Sections 3977, 3985) for the levying of taxes. The order of July 3, 1905 showing adoption or ratification of the contract in question, made for the court by two of its members, was likewise competent evidence. *Matkin v. Marengo County*, 137 Ala. 155, 158, 34 South, 171. In *Commissioners Court of Coffee County vs. Ballard*, 185 Ala. 501, 64 So. 311, speaking of the term of courts of county commissioners or boards of revenue in which is vested executive, legislative and judicial power in the establishment of public or private roads, it is said that such courts may establish such roads at a time other than the regular terms of the court as provided by statute; that is to say, the exercise of such power is not restricted to regular terms of said court. This decision

is in line with the pronouncement contained in *Barks v. Jefferson County*, supra, that commissioner's courts exercise an original quasi legislative, judicial and executive power under the Code of 1896 to establish bridges and it follows that such courts in dealing with the establishment of roads, bridges, ferries and causeways, were not restricted to their regular terms. *Hicks vs. State*, 16 Ala. App. 88, 75 So. 636."

The matter was adverted to at length in *Board of Revenue of Covington v. Merrill*, 68 So. 971, in which the Court said:

"The statute fixes, as we have seen, the day of the meeting in regular session 'on the second Monday in February, April, August and November respectively of each year, and such other special sessions as are now or may hereafter be required by law to be held by courts of county commissioners or other courts of like jurisdiction.' The statute does not, by fixing the day on which the regular sessions shall begin, limit the action of the board of revenue in general session to this designated second Monday. It does not require that all the county's business shall be concluded by the court in that one day. They are required to meet in regular session on that day, and are permitted and expected to continue the session from day to day, or as they may in session determine and declare till the public business is concluded. The special session provided for in the act is not prolongation of a regular session in the dispatch of the public business; it may be called when a proper adjournment has not been taken in regular session to a subsequent date. The regular session must begin on this day, and must be concluded or prolonged, or adjourned to any other time the judgment or convenience of the board may dictate, not to extend beyond the next regular session. Any other construction of the statute would narrow this necessary general authority reposed in the court or board, and interfere with the proper conduct of the county's business by the officials to whose judgment such matters are confided by the electorate of the county.

"If the minutes of the court show that the court was in session on the second Monday, and that they were in session on the next or succeeding days, thereafter, the continuance of the regular session would be presumed. The minutes will not be required to show the prolongation of the general quarterly sessions from day to day, if the court was in continuous session. If, however, the court was not in continuous session, but it was thought to the best interest of the county, or most convenient to the court, to adjourn to the subsequent day within that term, this might be lawfully done. Though done at adjourned terms the acts of the board have the same validity as if done on the day of the regular meeting prescribed by law.—*Hays v. Ahlrichs*, supra; *Ashford v. McKee*, 185 Ala. 620, 635, 62 South, 879; *Lewis v. Intendent*, 7 Ala. 85; *Williams v. State*, 67 Ala. 163, 186; *Revel v. State*. 26 Ga. 275; *People v. Northrup*, 50 Hard (N.Y.) 147."

See also *Lewis v. Gainesville*, 7 Ala. 85; *Hays v. Aldrich*, 115 Ala. 229, 22 South. 465; *Edwards v. Bibb County*, 193 Ala. 534, 538, 59 So. 449.

Special terms are provided by Section 6753.

From the foregoing it clearly appears that any regular term of the Court may be continued from day to day or adjourned from time to time, so long as such adjournment was to a date prior to the next regular term, and that the actions and orders of the court made at such adjourned sessions not otherwise objectionable are legal and proper.

Section 6771 of the Code of 1923 as amended by Act No. 669 approved July 31, 1931 (Acts 1931, p. 805) provides:

"That Section 6771 of the Code of Alabama of 1923 be and the same is hereby amended to read as follows: each member of the court of county commissioners and board of revenues in each of the several counties of the State of Alabama shall be paid out of the county treasury of their respective counties for their services the sum of \$3.00 per day while occupied in the discharge of their duties as such members of the court of county commissioners or board of revenue, and five cents per mile in going to and returning from their respective courts, and the sum of \$3.00 per day while occupied in the discharge of their duties in the letting out, inspecting and accepting, building, or repairing of any county bridge or county building or works, and five cents per mile for each mile necessarily traveled by them in so doing, said sums to be paid on warrants drawn on the county treasurer on the order of the court of county commissioners or board of revenue. No allowance shall be made to any commissioner for per diem or mileage for inspecting roads, bridges, etc., except when acting under authority of an order of the commissioners' court previously made. Provided however, that in cases of emergency and when necessity demands it shall be permissible for any member of the commissioners court or board of revenue to make inspections of roads and bridges and that such member shall be allowed his per diem and mileage on proof being made by such member to the court of county commissioners or boards of revenue that such emergency existed, and by filing a certified, itemized, statement of the amount of time spent and mileage traveled in making such inspection. Provided this shall not apply to counties in which the compensation of the members of the governing body of the county is fixed by local law or to any county having a population of as much as sixty thousand according to the last or any succeeding Federal Census."

It will be noted that the members are to be paid for "their services" "while occupied in the discharge of their duties as such members of the Court" and "five cents per mile in going to and returning from their respective courts".

The conclusion seems inescapable that if, as the above cited cases hold, the court can hold adjourned meetings, that the members are entitled to their per diem and mileage "while occupied in the discharge of their duties as members of such court," whether meeting in regular, adjourned or special term.

The opinion cited above so far as they hold otherwise and any other former opinions holding contrary to this, are expressly overruled.

The number and necessity of adjourned terms, is a matter which necessarily addresses itself to the Court, charged as it is with the management of the affairs of the particular county, and when such terms are held the members are entitled to their per diem and mileage.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 20, 1936

Hon. E. C. Glover,
Tax Collector, Henry County,
Abbeville, Alabama.

Tax Collector - Vacancy in office:

1. When there is a vacancy in office of Tax Collector of the County, such vacancy must be filled by the appointment of some person by the Governor.

2. When a person is appointed by the Governor to fill a vacancy in the office of County Tax Collector, such person holds the office for the unexpired term and until his successor is elected and qualified.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of January 8, 1936, which follows:

"I was appointed by Governor Graves to the office of Tax Collector for Henry County for the term commencing October 1, 1935, on default of bond being made by Hon. R. L. McLendon, as required by law and who had been elected for this term.

"Now, will this office have to be filled by election in the coming 1936 election? Or does the appointment hold for four full years commencing from the date of my appointment on October 1, 1935?

"An opinion from you clearing this matter will be greatly appreciated. As you see, the public interest is concerned in this matter."

In answer to the question raised in your letter, I wish to advise that when there is a vacancy in the office of Tax Collector of a County, such vacancy must be filled by appointment of some person by the Governor of the State of Alabama and that when a person is appointed by the Governor to fill a vacancy in the office of County Tax Collector, such person holds the office for the unexpired term and until his successor is elected and qualified.

Under the facts stated in your letter, you were appointed Tax Collector for Henry County for the term commencing October 1, 1935, and ending September 30, 1939. Under the law, you hold office for the unexpired term, which in this case is until September 30, 1939, and until your successor is elected and qualified.

I call your attention to an opinion of this office addressed to Mr. F. A. Walker, Chairman, Russell County, Democratic Executive Committee, Hurtsboro, Alabama under date of February 16, 1932, which is found in the Biennial Report of the Attorney General 1930-1932, at page 706. The question raised in your letter of inquiry is there dealt with in full, and this opinion is written in conformity therewith.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 20, 1936

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Attention of Mr. Simon Wampold, Chief Clerk.

Taxation - Redemption

(1) Partial redemption. Partial redemption may be made where land sold for taxes is purchased by individual.

(2) Rate of interest where redemption from individual:

(a) Where sale was made prior to approval of Act No. 20, approved June 15, 1932, the rate is governed by Section 3110 of the Code and is 15%.

(b) When sale was subsequent to September 15, 1932, rate is governed by said Act No. 20, and is 8%.

(c) When sale occurs subsequent to October 1, 1935, the rate is governed by the Revenue Act of 1935 and is 6%.

(3) Where certificate of sale made to the State is assigned to individual, such individual assignee's rights are the same as if he had been the purchaser at the sale.

(4) Where partial redemption is made from individual, or where certificate of State has been assigned to individual, it is not necessary

for the Probate Judge to submit the application to the State Bond Commissioner.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 16, 1936 addressed to Mr. Frontis H. Moore, in which you state:

"As per our conversation, I am submitting the proposition of redemption that we were discussing, and while I am not asking for an official opinion, yet I would appreciate very much if you would give me the results of your conclusion.

"John Smith's property is sold for taxes and bought in by the State of Alabama. Shortly after the Alabama National Bank purchases this certificate from the State Land Department. Does this sale then become an individual sale or does the Alabama National Bank simply stand in the shoes of the State of Alabama?

"Later on it develops that the Federal Land Bank has a mortgage on two-thirds of this property and wants to redeem only that part on which they have a mortgage. Can this office make this redemption without the consent of the Alabama National Bank or the State of Alabama? The Code sets out that any partial redemptions where property is sold to the State must be submitted to the Land Department before the Probate Judge can make the redemption, but does not make any provisions for partial redemptions where the individual is concerned.

"On individual sales interest was charged at the rate of 8% on all sales and on all subsequent taxes. This also applied to State sales but the 1935 Legislature made provisions relieving the delinquent taxpayer on any sale from 1931 to 1935 of all interest. Can the Legislature take away the individual rights?

"It seems that the whole proposition boils down to whether or not a person buying a tax certificate from the State for the sale makes the sale an individual sale or places him in the position of the State of Alabama.

"This is rather an interesting proposition and I would appreciate it if when you have time, you would go into it and let me hear from you."

Answering you, I call to your attention the following provisions of the Revenue Act. Section 225 provides for the assignment of the certificate of purchase by the State upon certain conditions. Section 241 provides for the delivery by the Judge of Probate of a deed "to a purchaser other than the state or person to whom the certificate of purchase has been assigned." Section 268 provides in part: "Real Estate which hereafter may be sold for taxes and purchased by the State may be redeemed at any time

before the title passes out of the State, or if purchased by any other purchaser may be redeemed at any time within three years from the date of the sale *** and such redemption may be of any part of the land so sold, which includes the whole of the interest of the redemptioner." Section 282, while applying to lands which have been bought in by the State at tax sale and sold by the State, has I think a general bearing on this subject as indicating that the transferee or the purchaser has all the rights that an individual would have had had he been the purchaser at the tax collector's sale.

It, therefore, would follow that where land has been sold to the State at tax sale and the certificate of sale assigned to an individual, such individual occupies, so far as the redemption statute is concerned, identically the same position that he would occupy had he been the purchaser at the tax sale, and all provisions applying to purchasers other than the State, apply to such individual who has been assigned the certificate of sale.

Applying this conclusion, Section 273 makes it very clear that it is not necessary in a case such as is submitted by you for the redemption to be submitted to the approval of the State Land Commissioner, the last three lines of Section 273 specifically stating:

"Where the land sought to be redeemed has been purchased by an individual and not by the State it shall not be necessary to submit the matter to the State Land Commissioner."

It is, however, clearly provided by Section 268 above quoted and by Sections 271 et seq. that partial redemptions apply in cases where land has been sold to an individual as well as to the State.

The question then arises, what rate of interest is chargeable? Formerly Section 3110 of the Code provided for interest or penalty of 15% upon redemption. This was changed by Act approved September 15, 1932, making the rate of interest 8%. As you know, this was further changed by the new Revenue Bill to make the rate of interest 6%. However, as you will note in the recent opinion to Judge Hawkins, which was sent to you, it was stated; "On the other hand, where private individuals have purchased land at tax sales, they acquire the property subject to the conditions which the law imposes at the time of the sale and their rights are filed and become vested thereby. The legislature cannot, as held by the former Attorney General, thereafter change the amount to which an individual purchaser at a tax sale is entitled upon redemption." The opinion referred to was that of February 17, 1933 addressed to the Hon. W. W. Brandon, Judge of Probate, Tuscaloosa County, Office Edition Book 13 page 178. In this opinion, on this particular question, it was stated:

"In my opinion, where lands were sold for the payment of taxes and brought in by an individual other than the State prior to September 15, 1932, the date of the approval of said Act No. 20, such individual acquires a vested right in the property so purchased such that it could not be redeemed otherwise than the law provided at the date of sale.

Any subsequent statute to the contrary would be unconstitutional. Besides there is no Act to the contrary. Said Act No. 20 so provides."

Continuing the discussion, it was stated that where a tax sale was held after September 15th, the redemption of the property is governed by Act No. 20, approved September 15, 1932. Therefore, if the sale was made to an individual or if the sale was made prior to September 15, 1932 and transferred to an individual prior to that date, the interest rate on redemption is 15%. If the sale was made between September 15, 1932 and October 1, 1935, and said sale was made to an individual, the interest rate on redemption would be 8%, and the same would apply where the sale was made to the State and the certificate of sale was assigned to an individual. Any sale made subsequent to October 1, 1935 would carry a rate of 6% on redemption whether such sale was made to an individual or to the State. My conclusion of your last specified question, gathered from the whole Act, is that a person buying a tax certificate from the State so far as redemption is concerned, occupies the same place as if such person had been the purchaser at the original tax sale.

I do though wish to call your attention to this paragraph of your letter: "On individual sales, interest was charged at the rate of 8% on all sales, and on all subsequent taxes. This also applied to State sales, but the 1935 Legislature made provisions relieving the delinquent taxpayer on any sale from 1931 to 1935 of all interest. Can the Legislature take away the individual rights?"

I do not so read Section 291, and the opinion to Judge Hawkins holds that it applies only to sales made to the State and the whole theory of the opinion is that the State is in possession of the property and the Legislature can do what it chooses with its own. As above quoted, it was specifically stated that it did not apply to individuals, and the opinion to Judge Brandon was referred to as authority.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 21, 1936

Dr. H. G. Camp,
Physician-Inspector,
Board of Administration,
Capitol.

Sheriffs. Feed Bills—

The sheriff in making out his feed bill for caring for prisoners must itemize same and show the amount of food, the number of prisoners, the sex of prisoners, when incarcerated and when released, and failing to do this, those charged with the duty of paying are without authority to pay same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 30, 1936, in which you request my opinion as follows:

"Attention is directed to Section 4834 of the Code, and an Act to Regulate the Feeding of Prisoners as amended and approved September 6th, 1927, requiring the sheriff to keep on file invoices and supporting papers of all foodstuffs purchased as provided etc.

"In the course of an examination of the sheriff's feeding account when the sheriff can produce no invoices, receipted bills or supporting papers to sustain fully the items of expenditure which the sheriff has set forth in the itemized statement of foodstuffs furnished under the law to the Physician-Inspector, Court of County Commissioners etc.

"Compilation of the average for the whole state of the daily per capita cost in all of the jails is compiled by this office. In the absence of the above mentioned invoices, is it permissible for my Examiner to allow the sheriff the State's average per capita cost?

"The sheriff has fed the prisoners and it would seem is entitled to some remuneration, although he has not kept invoices. If the State's average per capita cost can not be allowed, what basis should the Examiner use in auditing these accounts?"

I find no law that can authorize you to apply the law of averages when it comes to allowing claims of sheriffs for feeding prisoners. The statute says that before these claims are paid the sheriff or jailer must furnish the court of county commissioners, Board of Revenue or State Auditor, as the case may be, certain data as set out by Section 6 of an Act approved September 6, 1927 (General Acts 1927) which is as follows:

"Section 6. On or before the tenth day of each and every month the sheriff of each county shall furnish to the Court of County Commissioners, or Board of Revenue, as the case may be, to the State Auditor, and to the State Prison Inspector, an itemized statement in detail, verified by affidavit, giving a list of all state and county prisoners, by name, race and sex, the offense charged, authority for committing, disposition of prisoner, if sentenced, date discharged, the number of days in jail. The sheriff shall set out the amount of money actually expended for purchasing and supplying of all foodstuffs for feeding prisoners during the month immediately preceeding."

The account must contain an itemized statement of the amount fed to the inmates of the prison, etc. It is the duty of the sheriff to procure statements as to his purchases of food, so that he can at the end of each month make out his account for feeding prisoners, according to law. If he fails to do this, the Auditor should refuse to pay same. The law says this must be done and does not say in case he fails, then it is the duty of the Auditor, or those charged with the duty of passing on these claims to find the general average and pay him according to this.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 21, 1936

Hon. W. M. Vaughn,
Judge of Probate,
Dallas County,
Selma, Alabama.

Taxation—Land Agents.

1. Compensation of land agents payable out of total "proceeds" of redemption money, under McDermott Act (Act No. 440 approved Sept. 13, 1935).

2. Opinion to Hon. W. W. Hill, Probate Judge of Montgomery County, Dated Dec. 3, 1935, holding compensation of land agent payable by Judge of Probate, approved.

3. Municipal taxes not properly included in decree of sale, and not part of "proceeds" upon redemption.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter addressed to Mr. Frontis H. Moore in which you state:

"Mr. Carlton has just sent me an opinion which you recently gave the State Tax Commission in regard to House Bill 1048 which authorized the appointment of a Land Agent by the Tax Commission and provided for his remuneration.

"I had not seen your opinion prior to writing the Tax Commission that I would not pay said Agent. But in view of your opinion and particularly that part of it which is as follows:

"The statute is silent as to how the compensation is to be paid, but it does provide that it shall be paid from the funds so received. As the Probate Judge receives moneys paid in on redemption, presumably he should pay the land agent the commissions before remitting."

"I desire to call your attention to several questions before any actual conflict arises between some of the Probate Judges and said Land Agents, with the hope that matters may be clearly understood by both sides at the outset.

"1. The contract is made by the Chairman of the Tax Commission with the land agent, and the commission is agreed upon between them. Under Section 2 of said Act isn't it clear that the entire 10 per cent shall

be paid by the State (with whom he made his contract) from the funds so received (by the State)?

"2. Is there any authority of law whereby under any such contract the **Probate Judge** could **legally** deduct from any money due the **Board of Education** for any such commissions?

"3. Under Sec. 215 of the Constitution one-fourth of one per cent is levied and collected **exclusively** for road and bridge purposes. Could a deduction be made from such fund to pay said **commissions**?

"The same applies to the amount due the City School Fund, where a special tax is levied in Selma for schools and collected by the County Tax Collector.

"I have heretofore been notified by the counsel for the County School Board that I would be held responsible for any deductions made on account of such commissions.

"All of these matters arose during the last administration and after much correspondence and argument pro and con, the entire matter was dropped. As I can see new troubles just ahead, I would thank you to look into this matter in your usual careful manner and let me hear from you."

Assuming that you desire a formal opinion on these questions, I advise you as follows:

1. The Act in question (No. 440 H. B. 1048 approved September 13, 1935) provides:

"Section 1. The State Land Commissioner, with the approval of the Governor, may contract with some person or firm in each county of this State to investigate sales of real property for taxes and bid in for the State, to notify parties at interest in such real estate of such sales, to secure redemptions of said property, to secure sales of said property subject to sale at private sale by the State.

"Section 2. For such services rendered under the preceding section, the State Land Commissioner may allow fair compensation, to be fixed in the contract, which shall not exceed 10 per cent of the proceeds of such rent, sale or redemption, and shall be paid from the funds so received.

"Section 3. All laws and parts of laws in conflict herewith are hereby expressly repealed.

Section 4. This Act shall go into effect immediately upon its passage.

"Approved September 13, 1935."

It is to be noted that the Act applies only in cases where lands have been sold to the State.

Section 2 provides for the compensation of the Land Agent "which shall not exceed 10 per cent of the proceeds of such rent, sale or redemption, and shall be paid from the funds so received.

I think the opinion to Judge Hill, to which you referred answers your first question. However, I call to your attention opinion to Hon. Eugene H. Hawkins, Probate Judge of Jefferson County, dated November 22, 1935. I held, *inter alia*:

"Presuming a valid sale, and any discussion is necessarily made upon the hypothesis of a valid sale, the State has foreclosed its lien and the judgment which includes the tax is satisfied and the title to the property passes to the State absolutely."

And on page 5 of said opinion, it was stated:

"After the sale to the State there can be no new assessment or tax liability. While the amounts required to be paid upon redemption for the years subsequent to the sale are loosely termed annual taxes, such terminology is merely one of convenience, to describe the annual **amounts** which the Legislature has declared shall be paid. The fact that the Legislature has endeavored to have such amounts approximate what the annual taxes would have been if the property had been individually owned, does not convert such 'amounts' into 'taxes' or the annual valuations provided by the statutes into 'assessments.' "

From this, it appears that the amounts payable on redemption are not strictly taxes, and are subject to such distinction and disposal as the Legislature may make.

Even treating the amounts received as taxes, however it would appear that the rule laid down in *Shaver v. Robinson*, 59 Ala. 195 and approved in *Jefferson County v. City of Birmingham*, 221 Ala. 476 (123 So. 43,) in *City of Birmingham v. So. Express Co.* 164 Ala. 529. (51 So. 159) and *State v. Jefferson Co.* 17 Ala. App. 460, 86 So. 88, 204 Ala. 393, 86 So. 89, cited in opinion to Hon. R. E. King, Tax Collector of Mobile County, under date of January 11, 1935, holding that taxes can be charged with the expenses of assessment and collection, would authorize the payment of reasonable compensation to the land agent, such being a part of the expenses of collection, just as is the amount the Probate Judge receives for his services. What amount is reasonable is a legislative question.

The compensation being based upon the "proceeds" and upon redemption, such proceeds, being payable to the Judge of Probate, it appears to follow that he should pay the land agent upon proper showing of services rendered as outlined in the opinion to Judge Hill above referred to by you.

The foregoing answers question 2 and 3. The effect if the cases cited that all taxes bear their proportion of the expense of collection. Under the

reasoning in the opinion to Judge Hawkins, the matter would be exclusively legislative in my judgment.

I am not quite clear as to the facts upon which your fourth question is based. Assuming it to be strictly a municipal levy, for municipal purposes (though appropriated to the schools) which the tax collector is required by statute or ordinance, authorized by Section 3095 of the Code of 1923 (Section 201 of the 1935 Revenue Act), to make such levy should not have been included in the decree of sale, and hence would not be a part of the "proceeds" upon redemption. **Biennial Report of Attorney General 1930-1932, p. 1005.**

If on the other hand, it is a school district tax such district embracing only the City of Selma, the rule stated in answer to questions 2 and 3, would apply.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 24, 1936

Hon. E. T. Carpenter,
Clerk, Circuit Court,
Washington County,
Chatom, Alabama.

When a defendant is convicted in the County Court of a criminal offense and appeals to the Circuit Court and is there convicted, the only fine which he has to pay is the one assessed in the Circuit Court, as the case when reaching the Circuit Court is tried de novo without regard to any former conviction.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 4, 1935 in which you request my opinion as follows:

"When a Defendant is sent to hard labor there is no fine collected. Suppose a Defendant is found guilty in County Court and he takes an appeal to Circuit Court and is found guilty in Circuit Court and is sentenced to hard labor.

"On the cost bill for the County Court side there is no fine charged, and the defendant works out the fine in Circuit Court and wants to pay the cost, is he required to pay a fine in County Court? See there is no fine added to cost against the defendant in county court when transcript

is made up from Circuit Court and lower court cost brought forward the fine is not included."

The answer to your question is in the negative. When a criminal case is appealed from the County Court to the Circuit Court the case is tried de novo; that is, without regard to what happened in County Court. Therefore, the fine assessed by the Circuit Court is the only fine for which the defendant can be required to pay. See Section 3843 of the Code of Alabama, 1923, which is as follows:

"3843. Trial of appeal de novo; statement of cause of complaint.—The trial in the circuit court shall be de novo, and without any indictment or presentment by the grand jury; but the solicitor shall make a brief statement of the cause of complaint signed by him, which may be in the following form:

"The State of Alabama, In the Circuit Court,..... term,
..... County. 19..... On appeal from the county court.

"The State of Alabama, by its solicitor, complains of C. D., that, within twelve months before the commencement of this prosecution, he did (here describe the offense as in the cases of indictment.)

G. H. Solicitor."

I do not find where this question has been before either of the courts of last resort nor has this office passed on it before, but I think the conclusion reached above is the only conclusion possible.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 24, 1936

Hon. M. W. Forman,
Judge of Probate,
St. Clair County,
Ashville, Alabama.

Court Reporter:

1. County shall pay costs incurred by grand jury in having court reporter transcribe proceedings of said grand jury, when reporter was directed to transcribe the proceedings by the solicitor or foreman of the grand jury.

2. County has no authority to pay court reporter for taking testimony on preliminary hearing in county court.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of January 16, 1936, in which you state:

"Mr. H. H. Smith, Court Reporter in Circuit Court of St. Clair County has presented to St. Clair County, a bill for services rendered in making transcript of proceedings of Grand Juries held at Ashville and Pell City. These claims of Mr. Smith are for copies made of the transcript, the original in each case having gone to the State.

"Please advise if county can legally pay above claim.

"Please also give me your opinion as to whether we can pay Court Stenographer in County Court, this being case of State of Alabama vs. Mrs. W. J. Corbett, which was a bank robbery case. I presume the Court Reporter was ordered by the Solicitor in this case."

It is my opinion that your first question should be answered in the affirmative.

In answering your question, I am assuming that the court reporter was directed to transcribe proceedings of the grand jury by the solicitor or the foreman of the grand jury, and that the copies of the transcript were used by the solicitor or the members of the grand jury in carrying out the duties, and purposes of said body.

In the case of *State v. Knighton*, 21 Ala. App. 330, 108 So. 85, the Court of Appeals of Alabama said: **When the grand jury is so impaneled and sworn, it becomes the supreme inquisitorial body of the county, and no preliminary act of any court or judge can limit its powers."**

As the grand jury is "the supreme inquisitorial body of the county" in my opinion the county should defray all reasonable expenses incurred by said body.

The reporter should be paid the copy rate of five cents per hundred words for preparing copies of the transcript as provided for in Section 6735 of the 1923 Code of Alabama.

It is my opinion that your second question should be answered in the negative.

I have been unable to find any authority for paying the court reporter for taking testimony in the county court. The only law providing for the payment of a court reporter is contained in Sections 6733-6742 of the 1923 Code of Alabama, and these sections apply to official court reporters for the various circuit courts of the State.

This office has previously ruled that there was no authority for paying a court reporter for taking testimony at a preliminary hearing in the Probate Court, or for taking testimony at a habeas corpus proceeding.—**Biennial Report of Attorney General 1928-1930**, pp. 710 and 1625.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Board of Revenue,
Barbour County,
Eufaula, Alabama.

Court of County Commissioners—County Governing Body may pay annual installments of cost of paving street in municipality, which abut county property, from gasoline tax fund.

Opinion by Assistant Attorney General Rowe.

Gentlemen:

I have your request for opinion dated January 23, 1936 over the signature of Messrs. McDowell & McDowell, as your counsel, as follows:

"Clayton is the county seat of Barbour County; and the Court House is situated on 'the square.' The County jail stands on 'Midway Street'. Some years ago the city of Clayton duly and legally provided for paving the city of Clayton, and property fronting on the 'square' and Midway Street was assessed per front foot, the cost of the paving against these two pieces of property was assessed against Barbour County. The Board of Revenue in the course of years has met the annual assessments due the city of Clayton for paving assessments until default was made in 1934.

"Default has been made by the County in the payments due on said paving assessment and there is due on the Court House paving for 1934—\$348.94, for 1935—\$310.17, which are past due, and a balance of \$276.87 due in 1936; and there is due on the County Jail paving for 1934—\$147.28, for 1935—\$120.52, which are past due, and a balance of \$116.95 which is due in 1936. The bondholders of the said pavement bonds are pressing the municipal officers of Clayton for past due payments and threaten legal action if payment is not made of the amounts due.

"The Board of Revenue desire to pay this out of the County's Gasoline Tax. It should be paid, and as it is for roadways, it appears to us that it is legal. We desire to have your opinion on it, and trust you will approve the payment from the Gasoline Fund."

In my opinion, the County Board of Revenue may pay from the gasoline tax funds annual installments of the cost of paving streets within a municipality upon which county property abuts.

In Biennial Report of the Attorney General of 1932-34, pages 329 and 534, are two opinions of this office which, although not directly in point, supply the reasoning upon which the present conclusion is based.

In *Smith vs. Franklin County*, 221 Ala. 136, 127 So. 904, the Court, speaking to a question closely related to the one now under consideration, said:

"But that was not to hold that the Legislature might not authorize a county voluntarily to contribute to the improvement of a street in a city or town within the county, and certainly, the fact that the street improved or to be improved is contingent upon county property affords no argument against the constitutionality or legislative wisdom of such a contribution. Nor will it be denied that a county has an interest to be cared for in the highways, whether roads or streets, which lead to its courthouse and other public buildings. Nothing to the contrary of our present opinion was said in *City of Huntsville v. Madison County*, *supra*, nor in *City of Decatur v. Southern Railway*, 187 Ala. 364, 65 So. 536, where in some respects the opinion in *City of Huntsville v. Madison County* was amplified and explained as intending only that, in the then state of statutory law, there could be no 'personal judgment' against the county. Here, limiting our decision to the exigency of the case presented, we find no statutory or constitutional inhibition against a county's contribution, in the shape of interest-bearing warrants, to the improvement of the streets adjacent to its public buildings, even though located in a town or city."

I know of no provision of law which would bar the County Governing Body from paying the installments for paving from the gasoline tax funds.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Hon. Howell Turner,
Secretary of State,
Montgomery, Alabama.

Costs and Fees—

Fee to Secretary of State provided by Acts 1935, p. 63, is chargeable for the perfection of service of process upon each non-resident defendant, although two or more such defendants are joined in one suit.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Receipt is acknowledged of your request for opinion dated February 10, 1936 as follows:

"House Bill No. 84, Governor's No. 32 of the Acts of 1935 (Acts 1935, p. 63) provides a fee of \$3.00 for process on non-resident operators of motor vehicles.

"Please advise whether I shall charge the fee of \$3.00 in each case or \$3.00 for each process where there are two or more defendants in one complaint."

In my opinion, a fee of \$3.00 for each non-resident defendant to be so served with process should be collected in each case, although two or more non-residents are joined as parties defendant in one cause of action. The Act provides:

"Service of such process shall be made by leaving three copies of the summons and complaint, with a fee of Three Dollars, with the Secretary of State of the State of Alabama, and such service shall be sufficient service upon such non-resident defendant; provided, that notice of such service and a copy of the summons and complaint are forthwith sent by registered mail to the defendant by the Secretary of State of the State of Alabama, or his successor in office, and the defendant's return receipt and the certificate of the Secretary of State or his successor in office, of the compliance herewith, which shall be filed in the office of the Clerk of the Court or in the Court wherein said action may be pending."

It is analogous to the fee provided by law for issuance of process and for service thereof in cases of resident defendants. The fee provided by the Act of 1935, supra, is for the effective service of the process. It is to be collected for the perfection of service on each non-resident defendant.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Coroner for Houston County does not have authority to appoint a deputy.

Section 1072 of the 1923 Code of Alabama, as amended by Act No. 444 S. B. 248, approved September 13, 1935, (General Acts 1935, p. 932), merely provides for certain duties to be performed by the Coroner when called on by the County Health Officer and does not restrain or limit the general duties of the coroner as provided by law.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of January 31, 1936, which is as follows:

"Please advise if there is an authority in law for a coroner to appoint a deputy.

"Should such deputy's bond be made payable to the State of Alabama or the coroner proper.

"Please advise, also, if Section 1072 of the Code as amended by the Legislature of August, 1935, and the provision contained is cumulative duties of the coroner or if this means that his duties are restricted to the provisions of this section.

"In other words does this section apply to his duties only as they relate to the demands made on him by the Health Officer when the occasion arises, or does it mean that in every case where a coroner is necessary he must be called only by authority of the Health Officer."

Answering your first question, in my opinion there is no authority under the general law for a coroner to appoint a deputy and I have been unable to find any special statute which gives the coroner for Houston County the right to appoint a deputy.

Answering your second question, in my opinion Section 1072 of the 1923 Code of Alabama, as amended by Act No. 444, S. B. 248, approved September 13, 1935, (General Acts 1935, p. 932) merely provides for certain duties to be performed by the coroner, when he is called on by the County Health Officer, and does not restrict or limit the general duties of the coroner as provided by law.

The coroner is required by statute to perform certain duties that do not pertain to the health laws and in which the County Health Officer has no interest, such as are provided by Sections 160, 161 and 162 of the 1923 Code of Alabama, which are as follows:

"160. When to discharge duties of jailer.--
The coroner is keeper of the jail when the sheriff is imprisoned."

"161. When to discharge duties of sheriff.--

He must discharge the duties of the sheriff:

1. When the office of sheriff is vacant, and until his successor is qualified.
2. When the sheriff is imprisoned.
3. In cases to which the sheriff is a party.
4. In such cases as he is directed by the judge of probate."

"162. When sheriff interested, coroner acts.--

When the sheriff is interested in any cause or proceeding, such interest not appearing on the face thereof, the judge of probate may, on a proper showing by affidavit, direct the coroner to execute the summons, writ or other process, in such cause or proceeding."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Hon. Roy Johnson,
Tax Assessor,
Jefferson County,
Birmingham, Alabama.

Taxation - Redemption - where party redeems from tax sale to the State under the installment plan authorized by Section 291 of the 1935 Revenue Act, he should assess and pay the taxes for all years subsequent to such redemption.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your request for opinion stating:

"Under Section 291 of the 1935 Revenue Code I quote from the last part of the section as follows:

" 'Shall deposit with the Probate Judge $\frac{1}{4}$ of the amount of accrued taxes without interest & penalties and annually thereafter, shall pay $\frac{1}{4}$ of said sum to the Probate Judge together with all taxes which may become due subsequent to such first payment until the whole amount required has been paid, and thereupon certificate of redemption shall be issued as in other cases.'

"Under Section 292, however, Judge Eugene Hawkins, Probate Judge of Jefferson County, and myself have agreed that the intent was for the Tax Assessor to accept assessments where a one-fourth payment had been made in the process of redemption and that the only way the subsequent years' taxes could be determined would be to assess property and let the tax collector collect the subsequent years. When installments were paid to the Probate Judge, a receipt from the tax collector, showing that subsequent taxes had been paid, would have to be presented to the Probate Judge before he would accept any new installments.

"Now the question is whether the tax assessor should take assessments where a one-fourth payment had been made in the process of redemption. Section 292 sets out that in cases of failure to pay either the next annual installment or the subsequent year's taxes that the same should be sold. Therefore, this leaves the impression that after one installment has been paid the State does not have title to the property, so it becomes assessable."

The sections of the Revenue Act primarily involved are Sections 291 and 292 of the 1935 Revenue Act.

The question of prime importance in your inquiry is whether a petition for redemption under the partial payment plan and the deposit of an installment as provided by 291 actually effects a redemption so as to pass the title from the State to the redemptioner, the State reserving a lien for the balance due, or whether by such payment the would be redemptioner merely acquire a right to redeem by making the remaining payments required.

In a lengthy opinion to Judge Hawkins dated November 22, 1935, Quarterly Report, Vol. 1, 207, I held that in a valid sale of land for taxes the title passed to the State and hence the Legislature could fix such terms of redemption, including the waiver of interest and the right to make redemption on the installment basis - the opinion construing Section 291 and the related sections.

It is necessary, therefore, in answering your inquiry to bear in mind the philosophy and holding of that opinion.

The first postulate is that the sale of land for taxes conveyed the title to the State.

The next is that redemption is a manner of sale by the State of its property thus acquired, and

Third, the amounts fixed for redemption are not taxes, but amounts which the Legislature has declared should be paid upon redemption.

Fourth, that upon redemption the title of the State passes to the redemptioner.

With these premises, what is the nature of the redemption which is effectuated by the installment plan provided by Section 291. Section 291 provides in part:

"Section 291. Whenever any real estate has prior to January 1, 1935, been sold for taxes and bid in by the State at tax sale, the same may be redeemed in the same manner as heretofore provided for sales made after January 1, 1935, except that the following additional provisions shall apply: All persons having the right to redeem, shall have four years from the date of sale to redeem and such redemption shall be made as in other cases, except that the party desiring to redeem may pay the amount of accrued taxes in four equal installments without interest or penalties."

Attention is called to these expressions found in Section 291. "May be redeemed in the same manner," "all persons having the right to redeem", "shall have four years to redeem" "and such redemption shall be made as in other cases except that the party desiring to redeem may pay the amount of accrued taxes in four equal installments without interest or penalties."

Without more, the foregoing would very clearly indicate that so far as passing the title from the State to the redemptioner, the same legal effect is intended by the installment payment as if the redemption money had been paid in full.

However, the remainder of the statute provides:

"***any person having the right to redeem any property sold to the State for taxes, and who desires to redeem under the provisions hereof, shall, before January 1, 1937, make application to the State Land Commissioner and to the Probate Judge of the County where the real estate is situated, and shall deposit with the Probate Judge one-fourth of the amount of accrued taxes without interest and penalties and annually hereafter, shall pay one-fourth of said sum to the Probate Judge together with all taxes which may become due subsequent to such first payment until the whole amount required has been paid, and thereupon certificate of redemption shall be issued as in other cases."

This portion of the statute might cast some doubt on the conclusion reached above except for Section 292.

This Section provides:

"Section 292. The State of Alabama shall have a lien for all unpaid partial payments as well as for taxes for any subsequent year, and in case of the failure to pay any one of said installments together with the taxes for any subsequent year, either or both, the State Land Commissioner for and in the name of the State of Alabama, shall at his option declare all said installments due and payable at once. In case of default in payment of any installment or of any subsequent taxes, the State Land Commissioner in the name of the State shall have a right to file a bill in equity to foreclose the lien of the State the major portion thereof is situated. The Court shall determine and in such suit all parties at interest shall be made parties defendant. Such suit shall be filed in the County where the land or what amount, if any, of such taxes or installments are illegal, and in its final decree shall determine the total amount due on such installment payments, and any unpaid

subsequent taxes, and shall render judgment therefor which shall include costs and shall order the property sold to satisfy the decree in the same manner as in the foreclosure of mortgages on real estate in the Court or Equity. If at such sale no one bids a sufficient sum to pay the full amount of the decree, the officer conducting the sale shall announce that the real estate is sold to the State of Alabama for the amount of the decree, interest and costs, and the sale shall be reported to the Court and be confirmed and a deed made to the State of Alabama, and the State shall be entitled to a writ of possession. The purchaser at such sale, including the State shall be entitled to a deed, and the same processes and remedies to obtain possession of the premises as in other suits where land is sold under order of a court of equity, and the title to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action."

It is to be noted that the State shall have a "lien" for unpaid installments. This would indicate that there is a conveyance to the redemptioner with a lien similar to a vendor's lien reserved, and not merely an option to purchase or redeem upon payment of the balance due.

This is further emphasized by the specific manner in which foreclosure is provided for and the ultimate sale to the State. There is even a provision for a deed to the State upon such foreclosure.

The conclusion that I reach from both the sections read together is that upon making the installment payment required, the lands pass back to the redemptioner and hence it is his duty to annually assess and pay the taxes thereon for the years subsequent to such redemption. He must, of course, also make the balance of the installment payments to avoid foreclosure as provided by Section 292.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Mrs. Macie Thrasher, Chairman,
Macon County Board of Registrars,
Tuskegee, Alabama.

Registration - Voting -

Wife of State employee may acquire residence of husband for purposes of registration and voting.

Opinion by Assistant Attorney General Small.

Dear Madam:

I have your letter of January 25, 1936 requesting my opinion as follows:

"I would like your ruling on the following:

We have here a young man working with the Highway Department that moves around so often that his wife does not get a chance to register. This is his home and he still votes here. His wife has never lived here but this young man thinks because this is his home that his wife would have the right to register and vote in Macon County, due to the fact that she is not in one place long enough to establish a residence."

In reply, I wish to advise that, in my opinion, if the applicant mentioned in your request offers sufficient proof to convince the Board of Registrars that she intended to make Macon County her home at such time as would be twelve months preceding the next general election, that she has done no act which would militate against such intention in the meantime, she should be permitted to register in Macon County. I refer you to an opinion of the Attorney General rendered to Hon. Charles E. McCall, State Auditor, State Capitol, on the 29th day of January, 1936 in which you will find set out facts almost identical to the instant question.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Hon. Andrew J. Dearman,
Tax Assessor, Greene County,
Eutaw, Alabama.

Tax Assessor - Plat Book -

Plat Books may be made at such times as in the judgment of the county governing body are necessary.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of January 31, 1936 requesting my opinion as follows:

"Is the Board of Revenue of Greene County authorized to pay the Tax Assessor for making a Plat Book every four years?

"If not, how often is the Board authorized to do so?"

I reply I wish to advise that the answer to your question requires a construction of Sections 60 and 61 of the Revenue Act of 1935 (H. B. 324) found on page 41 of said Act which I set out here as follows:

"The Tax Assessor shall make, or cause to be made, a complete plat book or books of all real estate in the county, unless such book or books have already been provided, in a form to be prescribed by the State Tax Commission, in which the name of the owner shall be entered on each separate subdivision, together with the assessed value thereof.

"The court of county Commissioners or court of like jurisdiction shall pay out of the general fund of the county, for making out the plat books required by this and the preceding section, a reasonable compensation to the person performing said work which debt shall be preferred claim against the county."

In my judgment, there is no authority expressed here for the payment for making of the plat book "every four years". The law contemplates "the making" of this book at such times as the circumstances governing each case may require.

The county governing body is charged with the responsibility of paying for this service, and the duty of auditing this claim against the county for the purpose of determining whether or not it should be paid. See Section 234 of the Code of 1923.

It is, therefore, my opinion that if and when in the judgment of the county governing body the plat book in use by the Tax Assessor may no longer be used efficiently, they may allow compensation as provided by law for the making of this book.

A part of an opinion of the Attorney General rendered to Hon. Charles E. McCall on March 12, 1928 and reported in the Biennial Report of 1926-1928, page 468 is in conflict with the present opinion and is to that extent hereby expressly overruled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 26, 1936

Hon. J. F. Laseter,
Judge of Probate,
Barbour County,
Clayton, Alabama.

Probate Judge's duty on the expiration of his official relation, to turn over to his qualified successor all fiduciary funds.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of February 4, 1936 in which you state.

"Please give me opinion on the following question: On retiring from office as Probate Judge is it compulsory and according to law that the retiring Probate Judge turn over to his successor all fiduciary funds or is this left entirely with the discretion of the retiring Probate Judge."

Answering your question, it is my opinion that it is the duty of the retiring Probate Judge to turn over to his qualified successor all fiduciary funds belonging to said office.

In the case of *Thompson v. Holt*, 52 Ala. p. 428, the Supreme Court of Alabama, said:

"It is the duty of every public officer, on the expiration of his official relation, to surrender to his successor the property of the office which the law commits to his custody. In such property he has no individual right or interest; the title to it resides in the public, and of it he is merely custodian during his continuance in office.

The duty is ministerial merely, no matter on what officer it devolves; and at common law, its performance was enforced by mandamus. The general assembly deeming the common law remedy too dilatory, and impressed with a conviction of the importance of avoiding the public injury which would ensue from protracted litigation between the outgoing and incoming officer over the property of the office, provided a summary remedy for compelling the delivery of books, papers, property, and money, by public officers to their successors. It is first declared that in all cases, in which it is not otherwise expressly provided, when any office is vacated except by the death of the incumbent, all books, papers, property and money, belonging or appertaining to such office, must, on demand, be delivered over to the qualified successor; a violation of the duty is a misdemeanor. ***" (Italics supplied).

I call your attention to Sections 5043 and 5052 of the 1923 Code of Alabama, which are as follows:

"5043. Failure to deliver property and papers of office to successor.-- Any person who fails or refuses on demand to deliver the books, papers property, and money belonging to an office to the qualified successor in office, as required by law, must on conviction, be fined not less than two hundred dollars.

"Section 5052. Clerk in office of judge of probate failing to deliver books, etc., to successor. -- Any clerk or person in the office of the judge of probate who obtains possession of the books, papers, money or property belonging or appertaining to such office pending a vacancy therein, and who fails or refuses on demand to deliver such books, papers money, or property to the lawfully qualified successor of the judge of probate, must, on conviction, be fined not less than two hundred dollars."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 27, 1936

Hon. J. W. Hamilton,
Tax Collector,
Jefferson County,
Birmingham, Alabama.

Taxation - Tax Sales - Certificates of purchase (1) Where land sold at tax sale is sold to individual, the tax collector should issue proper certificate of purchase. (2) Where the State is the purchaser, the Judge of Probate should issue such certificate.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 21, 1936, as follows:

"In attempting to apply House Bill 324 to the operation of my office I find that Sections 225, 231 and 232 conflict in regard to the issuance of certificates of purchase to the various purchasers, including the State, for lands sold for delinquent tax. Section 225 directs the Probate Judge to order the Tax Collector to issue proper certificates of purchase to the various purchasers, including the State. Section 231 directs the Tax Collector to issue certificates of purchase to each purchaser other than the state, while Section 232 directs the Probate Judge to make out a certificate of purchase to the state of like import to the one provided for in Section 231.

"This certainly could not have been the intent of the legislature to require both the Tax Collector and Probate Judge to issue certificates of purchase to the State, and I would thank you for an opinion as to just which of these sections I should operate under.

"Inasmuch as I will have to immediately place my order for docket sheets, certificates, etc., costing several hundred dollars, I would appreciate an early opinion so that I may have same printed accordingly."

Section 225 of the 1935 Revenue Act provides:

"Section 225. Within ten days after such sale the Tax Collector shall make report of each sale to the Probate Court and praying confirmation thereof. Such report shall lie over for a period of five days for exceptions or objections thereto. If upon the expiration of five days no objections have been filed, or if in the opinion of the Court they are insufficient, and it appearing to the Court that the Tax Collector sold such real estate in accordance with the law, and the decree of Court ordering such sale, the Court shall make and enter an order confirming said sale, which shall be entered on the same book or docket as the original decree of sale, and ordering the Tax Collector to issue proper certificates of purchase to the various purchasers, including the State."

Section 231 of the Revenue Act of 1935 provides:

"Section 231. As soon after the confirmation of sale is made as may be practicable, the Tax Collector must make out and deliver to each purchaser other than the State, a certificate of purchase, which shall contain a description of the real estate sold and show that the sum was assessed by the Assessor, to whom assessed, the date of assessment for what year or years the taxes were due, the amount of taxes thereon, distinguishing the amount due the State and County, and for School purposes, and the fees and costs; that it was advertised and how long, and that it was offered for sale, and at what time, and who became the purchaser, and at what price, and the fact and date of the confirmation of such sale."

Section 232 of the Revenue Act of 1935 provides in part as follows:

"Section 232. For the real estate bid off for the State in each case the Judge of Probate shall make out a certificate of purchase to the State of like import to the one provided for in the preceding section, and deliver the same to the Tax Collector who shall, on final settlement, deliver all certificates received by him from the Judge of Probate to the State Comptroller, who shall examine carefully all certificates of purchase of real estate where the same were bid in for the State at tax sale.***"

While it would appear that there is a conflict between Sections 225 and 232, I think that they can be reasonably harmonized by reference to the primary subject matter of the two Sections. Section 225 is primarily concerned with the report of sale by the Tax Collector and its confirmation by the Probate Court.

The controlling thought of Section 231, is the issuance of the certificate of purchase to the individual purchaser, which must be done by the Tax Collector and the controlling thought of Section 232 is the issuance of the certificate of purchase to the State when the State is the purchaser which must be done by the Judge of Probate.

While Section 225 says in its concluding clause, "And ordering the tax collector to issue proper certificates of purchase to the various purchasers, including the State," this must be read along with Sections 231 and 232, and must be construed to mean in the manner specifically provided by law.

It is, therefore, my opinion that if the words "including the State" have any field of operation, it is to require order of confirmation to recite that certificate to purchase be ordered issued in the manner required by law. That at lease is contemplated.

If on the other hand, the two provisions are in conflict, I am of the opinion that Section 232, specifically treating of a specific subject controls, and the certificate should be made by the Judge of Probate where the State is the purchaser at the tax sale.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 27, 1936

Hon. W. E. Bishop, President,
Commission of Jefferson County,
Birmingham, Alabama.

Counties - County may purchase real estate sold on execution in its favor in order to realize upon its judgment if private purchaser cannot be procured and if amount bid in is not greater than the reasonable market value of the property at the time of sale and is not greater than the amount of the county's judgment, together with the costs of execution.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Has Jefferson County the power to purchase at sheriff's sale, under execution issued out of the Circuit Court, lands levied on by the sheriff to satisfy an execution for costs. In this connection, please bear in mind that the county officers of Jefferson County are on a salary system and not a fee basis and that the costs in the Circuit Court for which execution is issued is the property of the county."

In my opinion, your inquiry should be answered in the affirmative.

Section 7221 of the Code of 1923 provides:

"7221. Costs given to successful party, or apportioned at discretion of court.- the successful party in all civil actions is entitled to full costs for which judgment must be rendered, unless in cases otherwise directed by law, or by the judgment of the court. The court may apportion the costs at his discretion as justice and equity may require; and this provision is applicable in all cases in which the state is a party plaintiff in civil actions as in cases of individual suitors. In all cases where costs are adjudged against any party who has given security for costs, execution may be ordered to issue against such security; but this section shall not apply to justice of the peace courts; but in such courts, the successful party shall recover his costs."

This section applies to counties as well as private litigants. *State v. Donaldson*, 209 Ala. 400, 96, So. 617.

In *Hill v. Moody*, 207 Ala. 325, 93 So. 422, the Court said:

"Counties are civil or political organizations of the State, with limited and defined powers, and are agencies or auxiliaries in the administration of civil government."

In 15 *Corpus Juris*, page 419, Article 51, the rule is stated:

"As a county is a quasi corporation and a governmental agency of the state, with no independent sovereignty, it possesses only such powers as are expressly given, or necessarily implied, in statutes constitutionally enacted."

See also *Standard Oil Company v. Limestone County*, 124 So. 523. The county, having the right under the above quoted statute to invoke the process of the court for the realization of its judgment for costs, by necessary implication has the right to purchase lands levied upon to satisfy said process when the same are offered for sale.

This implied authority does not give the county carte blanche, commercially to engage in the real estate business by purchasing any and all real estate offered for sale under execution or otherwise. The county ought not to purchase at such sale if a private purchaser is available who will bid the amount of the county's claim and the costs of execution; and in no event, should the county bid more than the amount of its claim and such costs nor more than the reasonable market value of such property, when the same is offered for sale.

The decisions on the authority of the county under such circumstances are not uniform. In *Shelley v. Lash*, 14 Minn. 498 and *Williams v. Lash*, 7 Minn. 496, the right of the county to purchase real estate sold on execution in its favor is denied, except when the property so purchased is to be used for public purposes authorized by law.

In *Parish of Concordia v. Bertron*, 46 La. Ann. 356, 15 So. 60, it is held that the police jury of a parish might purchase property of its debtor sold under execution in its favor. In *State v. Cunningham*, 51 Mo. 479, *Marshall County v. Hanna*, 57 Ia. 372, *Shanklin v. Madison County*, 21 Ohio State 575, the question was presented as to whether or not a county could accept in settlement of obligations owing to it property which it had no statutory authority to hold and own. In each of the cases it was held that the acceptance of an assignment or transfer of such property in satisfaction of the county's claim or demand against the assignor or transferor contravened no law or policy of the State; and that the general authority to receive the indebtedness owing to it carries with it the implied authority to salvage the said indebtedness or so much thereof as was possible, by acceptance of said assignment or transfer of such property.

In passing, your attention is called to the rule stated in 15 *Corpus Juris*, page 532, Article 216, that:

"Where the county is authorized for some purposes to acquire and to hold title to real estate, it cannot be made a question by any party, except the State, whether the real estate has been acquired for the authorized uses or not."

Following the general rule, the Oklahoma Court in *Benedict v. Board of Commissioners of Lincoln County*, 17 Pac. (2nd), 454, said:

"The mere fact that the county may have taken a deed conveying to it the fee-simple title for a purpose not authorized by law, does not

render the deed absolutely void. Neither the parties who conveyed the land, nor their heirs can complain or maintain an action to set aside the deed, or recover the land; the state alone can, as a general rule, complain, and it alone can maintain an action to divest the county of title thereto."

* * *

"The Supreme Court of the United States in the case of Reynolds v. First Nat. Bank, 112 U. S. 405, 5 S. Ct. 213, 217, L. Ed. 733, held: 'Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable. The sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose.'

"The Supreme Court of Missouri, speaking on the subject in Chambers v. City of St. Louis, 29 Mo. 543, said: 'There being a right in the city to purchase, if there is a capacity in the vendor to convey, so soon as a conveyance is made there is a complete sale; and if the corporation, in purchasing, violates or abuses the power to do so, that is no concern of the vendor or his heirs. It is a matter between the state and the city. The law is only directory in relation to a corporation taking lands. It imposes no penalty, nor does it in terms avoid the conveyance. Nowhere is a corporation in express terms prohibited from taking and holding lands. The city is duly incorporated with authority to hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require; and if, in holding and purchasing real estate, she passes the exact line of her power, it belongs to the government of the state to exact a forfeiture of her charter, and it is not for the courts, in a collateral way to determine the question of misuser by declaring void conveyances made in good faith. In this view of the subject, we are amply sustained by the authorities.'

* * *

"Under these authorities, plaintiffs cannot maintain this action. If the county has exceeded its authority in acquiring the fee-simple title to the land, as a general rule, the state alone can complain."

Of course, it is the duty of the County Governing Body to dispose of the county's right and interest in all such property so acquired at the earliest practicable date at which the amount of the county's claim or demand, and the costs incident to said sale, can be realized therefrom.

Cf. Jackson v. Ball et al, 211 Ala. 273, 100 So. 327.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 27, 1936

Hon. O. F. Lightner,
Sheriff of Coffee County,
Enterprise, Alabama.

Search and Seizure - Search warrant for seizure of prohibited liquors which are kept or stored in filling station may be executed at any time of night that the place is open.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for an opinion as follows:

"Am writing for an opinion as to searching stores, filling stations, and other houses after night, for prohibited liquors and beverages.

"I want to search a house, the front part of which is a filling station and the back part is the living quarters of the operator and his family. The party just keeps the whiskey in this house at night."

In my opinion a properly issued search warrant for the searching of a filling station in which is kept or stored prohibited liquors or bevarages may be executed at any hour of the day or night that the premises are open. Section 4751 of the Code of 1923, provides in part:

"4751. The warrant may be executed at any time between eight o'clock in the morning and six o'clock in the afternoon, or at any other time that the place or premises are open; ***".

The fact that the operator lives in a portion of the house, in my opinion, is immaterial. If, however, the portion of the building used as living quarters by the occupant's family is to be searched at night, the affidavit should "state positively" that liquor is in the house. See Code of 1923, Section 5478 - **Lakey v. State**, 18 Ala. App. 442.

Of course, the warrant should not be issued except on probable cause. See **Lundford v. Dietrich**, 93 Ala. 565, 9 So. 308.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 28, 1936

Hon. F. W. Reid, Clerk,
Circuit Court of Blount County,
Oneonta, Alabama.

1. **Examiners' Reports**--Examiners' reports should be recorded in the Court minutes.
2. **Circuit Clerks** — Circuit Clerks held entitled to compensation from ex officio fees for recording reports of State Examiners.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of December 14, 1935 requesting my opinion as follows:

"The Report of examination made by the State Examiners of Commissioners Court, Tax Assessor's Office, County Treasurer's Office and Circuit Clerk's Office have been filed in the Circuit Clerk's Office. I understand that these reports are to be recorded in the Minutes Book in this office.

"Please advise me who pays for the recording of these reports."

In reply, I wish to advise that Section 746 of the Code of 1923 provides for the recording of this report as follows:

"The examiners shall make sworn reports in triplicate, of their findings in state matters to the department within ten days after the completion of the work assigned, and triplicate reports on county work, two to the department, and the other to the judge of the circuit court or court having jurisdiction, who shall in his oral charge call the attention of the grand jury thereto and **have the same entered in full upon the minutes of the court.** Such reports shall be public records and shall be prima facie evidence of what they charge."

In my opinion, the above referred to reports must be entered in the minute book of the court; and in counties where ex-officio fees of the clerk are limited to two hundred dollars, the clerk shall be paid for the same as provided by law for copying such minutes in Section 7279 of the Code of 1923 as follows:

"Fees of clerks for keeping minutes of court. --

Clerks of the circuit courts in the counties where the ex officio fees of clerks are limited to two hundred dollars or less, shall be allowed out of the county treasury of the respective counties two dollars per day for the time the circuit court is in session in the county of which he is the clerk, for keeping the minutes of his said court, warrants for such service to be drawn by the probate judge of the respective counties; but said claim shall be first presented to and passed upon by the commissioners court or board of revenues of the respective counties."

Circuit clerks in counties in which said ex officio fees are not limited to two hundred dollars are entitled to compensation for this work from their ex officio fees as provided by Section 7265 of the Code of 1923 as follows:

"Account for ex officio services itemized and sworn to; maximum of allowance. -- Persons entitled to an allowance by the court of county commissioners for what are commonly called ex officio services, shall, before the allowance is made, itemize such services, and make oath thereto, as in the case of other claims against the county. The compensation allowed shall be the fair and reasonable value of the services, in no case to exceed two hundred dollars per annum, unless otherwise provided by law."

See also case of Troope vs. Morgan, 109 Ala. 162, 19 So. 503, 504.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 28, 1936

Hon. D. R. Boyd,
Deputy Solicitor,
Randolph County,
Roanoke, Alabama.

State pays for removal of a prisoner from another State, who without requisition is returned by the Sheriff of the County in which the crime was committed to this State for trial, only when the defendant is charged with and convicted of a felony.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of December 3, 1935, in which you state:

"At the request of the Sheriff of this county, I will thank you to render us an opinion as to payment of costs of apprehending a prisoner under the following circumstances:

"A felony (burglary) was committed in this county; about one month later at the request of the Sheriff of Talladega County, two men were arrested in Georgia, and the Talladega Sheriff went after them and they returned voluntarily. It developed that they were not the right parties for the Talladega case, but in the investigation they confessed the burglary here and so well related it that the injured party here and our Sheriff are thoroughly convinced they are guilty of the burglary here. The Talladega Sheriff collected from our Sheriff the costs incident to the arrest in Georgia and bringing the prisoners back to Talladega. Proper orders for removing the prisoners to this county were made and

our sheriff made claim for removal costs from Talladega County here."

You request my opinion:

"Is the Sheriff of this County entitled to pay for the costs incident to the arrest in Georgia and bringing the prisoners back? If so, is it payable by the State or the County?"

It is my opinion that your question should be answered in the negative.

The payment for the return of prisoners without requisition is governed by Section 3742 of the Code of 1923, which is as follows:

"3742. Criminal returning to state without requisition; fees of sheriff. —In cases where any sheriff in this state receives notice from the authorities in another state that a party or parties is or are arrested for crime committed in this state, and the sheriff of the county in which said crime was committed goes to the state aforesaid and the party or parties aforesaid consents to return with said sheriff without requisition from the governor, said sheriff shall be entitled to the fees and expenses now provided by law where requisitions issue. But this section shall apply only to felonies and only where conviction of the party or parties is had."

You will notice that the section, *supra*, provides that before payment of the costs the sheriff of the county in which said crime was committed is to return the prisoner and the section shall apply only to felonies and only where the party is convicted.

As the Sheriff of Randolph County did not return the prisoners and as they have never been convicted of a felony, it is my opinion that the Sheriff of Randolph County is not entitled to be reimbursed for the costs of returning the prisoners from Georgia.—*Biennial Report of Attorney General, 1930-1932, p. 637; Biennial Report of Attorney General, 1932-1934, p. 175.*

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Leonard V. Phelps, Director,
Bureau of Vital Statistics,
State Department of Health,
Montgomery, Alabama.

February 28, 1936

Coroner has authority to order the removal of a dead body from one registration district to another without the filing of a death certificate or the issuance of a removal permit.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of December 4, 1935, in which you state:

"We would like to have your interpretation of the law concerning coroners and the removal of a dead human body from one registration district to another.

You request my opinion:

"Has a coroner power to direct the removal of a body from one primary registration district to another without the filing of a death certificate or the issuance of a removal permit, under the provisions of Chapter 31 of the Health Laws and Regulations of the Code of Alabama?"

It is my opinion that your question should be answered in the affirmative.

I call your attention to Section 4559 of the 1923 Code of Alabama, which is as follows:

"4559. WITNESSES AND SURGEONS SUMMONED.—The coroner may issue subpoenas for witnesses returnable forthwith, or at such time and place as he may appoint; he must summon and examine as a witness any person who in his opinion or that of any of the jury, has any knowledge of the facts; he may also summons as a witness a surgeon or physician who must, in the presence of the jury inspect the body, and give a professional opinion as to the cause of death; when a coroner has been informed that a person is dead in the county, and that said person died without being attended or examined by a legally qualified physician, the coroner shall forthwith proceed to the place where the dead person is lying, and examine the dead body to ascertain the cause of death, he may summon any physician or surgeon, who shall make an external post-mortem examination of the dead body, and report his opinion of the cause of death to the coroner in writing; if the surgeon or physician is unable to determine the cause of death from an external post-mortem examination, and the coroner has reasonable cause to believe that deceased came to his or her death by unlawful means, the coroner may in such cases order any physician or surgeon to perform an autopsy or internal examination on the dead body, and report the findings of said autopsy to the coroner in writing."

By the section, supra, the coroner is expressly given the authority to order any physician or surgeon to perform an autopsy on a dead body, and in my opinion this authority impliedly carries with it the right to immediately order the removal of the body to a suitable place for the examination, without any delay as might be necessary if the coroner was required to file a death certificate or secure a removal permit. In some rural communities, it might be necessary to send a body forty or fifty miles to have an autopsy performed, and in that event any delay could be of vital importance to the success of the autopsy.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 28, 1936

Hon. J. W. Bryant,
Tax Collector,
Cullman County,
Cullman, Alabama.

Revenue Act—

Mortgagee, purchaser or lienholder may pay tax on real estate without paying on personal property, under certain circumstances.

Revenue Act—

Person assessing property may pay part of assessment without paying all, under certain circumstances.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of January 18, 1936, requesting my opinion as follows:

"Please advise me as to whether or not a mortgagee, purchaser, or lienholder can pay tax on real estate which is included in an assessment with personal property without paying on the personal property listed therein. (Sec. 169, 1935 Code).

"Also advise me if Section 169-A refers only to the person in whose name the property is assessed or to anyone wishing to pay any part of assessment."

The mortgagee, purchaser or lienholder may pay tax on real estate without paying on the personal property listed therein provided the value of the real estate can be ascertained from the assessment and provided further that the person to whom the personal property belongs has enough property subject to levy and sale out of which the taxes may be collected. (Section 169, 1935 Revenue Act, cited by you).

In my opinion, Section 169-A refers only to the person in whose name the property is assessed. (Section 169-A, 1935 Revenue Act, cited by you).

The Legislature made provision in Section 169 for a person, not the owner, who had an interest in a parcel of property to pay under certain safeguards the tax on the part of the property in which he is interested without having to pay the tax on all of the property of the owner. In Section 169-A, provision was made for the person making the assessment to pay only on part provided he also pays the tax on his personal property. In the former Section, a person not the owner is allowed to split the payment and in the latter Section the owner is allowed to split the payment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

February 28, 1936

Hon. A. L. Nettles,
Tax Collector, Monroe County,
Monroeville, Alabama.

Taxation--Refrigerator assessed on last day of September 1935,
not liable for 1935 ad valorem tax.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of January 7, 1936 in which you request my opinion as follows:

"A Monroe County tax payer purchased a new refrigerator in Monroe County on September 16, 1935. He did not own one up to that day. The Tax Assessor assessed him from information with the refrigerator for 1935 making the assessment on the last day of Sept. Please advise whether it is legal to collect tax for 1935 on this refrigerator."

In my opinion, the 1935 tax on refrigerator mentioned cannot be lawfully collected.

Section 29 of the Revenue Bill of 1935 provides for the assessment of property for ad valorem taxes as follows:

"The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and shall be finished by him on the first day of January following; but the Assessor may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstracts made for the Comptroller and Collector and State Tax Commission."

Section 11 of the said Revenue Act provides that

"All taxes, unless otherwise provided by law shall become due and payable on the first day of October in each year, and shall become delinquent if not paid before the first day of January succeeding, etc."

It is apparent from the above cited sections and from the entire system of tax administration that property is to be assessed for ad valorem taxes in the year preceding the date due and payable under Section 11. Accordingly, since the refrigerator mentioned in your inquiry was not assessed as provided by Section 29, you may not collect the tax for 1935 thereon.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 3, 1936

Hon. W. O. Brownfield, Clerk,
Circuit Court of Lee County,
Opelika, Alabama.

Section 3669, Code of Alabama, 1923, applies to solicitors' fees.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 5, 1936, in which you request my opinion as follows:

"Will you kindly advise me on the following matter:

Where Solicitors' fees are collected in the County Court and paid into the County Treasury and placed in the Solicitor Fund account as required by Section 5512 of the Code is the surplus of such fund, after paying the salary of the County Solicitor, or Deputy Solicitor for the County to be transferred to the Fine and Forfeiture Fund Account of the County? Does Section 3669, apply?"

It is my opinion that Section 3669, Code of Alabama, 1923, does apply to solicitors' fees.

This Section is as follows:

"The surplus money paid in to the state and county treasuries arising from the solicitors' fees after the solicitors and their assistants have respectively been paid the amount allowed them by law, shall be paid into the fine and forfeiture fund of the respective counties in direct proportion to the amount received from the convictions respectively."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 3, 1936

Hon. D. B. Borden,
Judge of Probate,
Hale County,
Greensboro, Alabama.

Quarantine -- Grocery bill for family quarantined within corporate limits of city not a legal claim against the county.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of February 7, 1936, in which you state:

"A family in Greensboro has been quarantined for smallpox; these people have nothing to pay the grocery bill with and I want to know who can pay this bill or whose duty it is to pay the bill, the city or the county. They are within the corporate limits of the City of Greensboro and the quarantine officer quarantined them upon the advice of the physician."

You request my opinion:

"I want to know if this would be a legal claim against the county."

In my opinion, as the family referred to in your letter is within the corporate limits of the City of Greensboro, the grocery bill is not a legal claim against the county.

I call your attention to Section 1218 of the 1923 Code of Alabama, which is as follows:

"1218. Expense of enforcing quarantine; how paid.--The expense of enforcing any quarantine for a county, or for a portion thereof, as provided for in the preceding sections, shall be defrayed by the court of county Commissioners, or of revenue of the county; that incurred in conducting a quarantine for an incorporated city or town shall be defrayed by the authorities of the city or town declaring quarantine."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 3, 1936

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Motor Vehicles -

Automobile used for demonstration purposes by a dealer, when sold, is a used automobile.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of January 29, 1936, in which you state:

"I would like to know if a car that is used for demonstration purposes when sold by the dealer is considered a new or used car, in order to know what kind of tag to sell for this type of car. The dealers contend that a car used for demonstration, even though an old model, is considered a new car when sold and therefore no penalty is due on it. I would like your advice concerning this matter?"

It is my opinion, that an automobile which has been used for demonstration purposes by a dealer and is then sold by said dealer, is a used automobile.

The license for said automobile cannot be purchased on a monthly declining basis and the only provision for a part year license is provided by Schedule 158.13 of the 1935 Revenue Act, which is as follows:

"SCHEDULE 158.13. (a) One-half of the license herein provided for shall be paid plus One Dollar (\$1.00) where the motor vehicle is acquired or brought into the State on or after April 1st of any year, or is not used or operated between the period from October first through March thirty-first following the payment of the registration fee or license tax on motor vehicle or trailers shall be evidenced by the delivery to the party paying the same of numbered license tags which shall be placed in a conspicuous place, in an upright position, right side up, on the rear of the automobile, when a semi-trailer truck is operated, one tag on the rear of the semi-trailer.**"

If the dealer has been operating the car under the proper dealer's license and the purchaser procures a license within the time required by law, then in my opinion, there is no penalty due on said license.

This office has held that a person is not liable for a penalty for delinquency in taking out a license unless he actually operates said vehicle prior to the time he secures a license.—**Quarterly Report of Attorney General, Vol. 1, p. 140.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Sam W. Hawkins,
Chairman, Board of Registrars,
Jefferson County,
Birmingham, Alabama.

March 3, 1933

A person convicted of a felony or other offense that involves moral turpitude is disqualified from voting in any election in Alabama until such disability is removed by the Governor.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 8, 1936, in which you request my opinion as follows:

"Mr. A. M. Miller was on September 5th, 1933 sentenced to serve a term of fifteen months in the Atlanta Penitentiary. The latter part of December, 1933, this sentence was modified by the Federal Court here to a jail sentence of six months.

"It is my understanding that the loss of Civil rights by reasons of conviction in a Federal Court is governed entirely by the laws of the State in which the party concerned resides. This being so, the Defendant being a resident of this State and the final sentence being one of six months, I would like to know whether or not this six months sentence in jail works a forfeiture of his citizenship rights. The charge was Conspiracy to Violate the Prohibition Law."

The right of suffrage is a matter that is left up to each sovereign State. -- Biennial Report of Attorney General 1930-1932, p. 742. But a conviction of a Federal offense that involves moral turpitude (which all felonies do) disqualifies a person from voting in any election in Alabama under Section 365, Code of Alabama, 1923, which is as follows:

" Any person who is disqualified from voting by reason of conviction of any of the offenses mentioned in Section 364 of this Code, except treason, whether the conviction was had in a State or Federal Court, and who has been pardoned, may be restored to his or her citizenship with the right to vote by the Governor, approved by the board of pardons and specially expressed in the pardon."

I am of the opinion that a person convicted of conspiracy under the Federal law is guilty of such an offense as would disqualify him from voting. I call your attention to Section 88, U. S. Code, Title 18, which is as follows:

"88. Conspiring to commit offense against United States. -- If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both." See also Biennial Report of Attorney General 1930-32, p. 712.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 3, 1936

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Gasoline shipped from without the State of Alabama to counties, cities or towns in the State of Alabama, where such gasoline is stored and withdrawn by such counties, cities or towns, and used for governmental purposes, is subject to the excise tax on gasoline provided by Schedules 156 and 156.1 found on pages 253 and 254 of the Revenue Act of 1935.

Opinion by The Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of February 25, 1935 as follows:

"Please advise as follows:

"May counties, Cities or Towns purchase gasoline outside the State of Alabama and have it shipped in by truck or railroad car, stored and used by such city or county, without the payment of the Excise tax on gasoline or any part of such tax?"

In answer to your question, I beg to refer you to an opinion of this office of April 1, 1935 in which it was held that gasoline purchased outside of Alabama by an Alabama City, and brought into the State solely for governmental use should not be taxed under the gasoline tax laws.

This opinion was based on an Act found on pages 859 and 860 of the General Acts of Alabama of 1931 and an Act of the Legislature of Alabama of 1932, extraordinary session, page 314.

The opinion was also based on a construction of the statutes just mentioned by the Supreme Court of Alabama in the case of the State of Alabama vs. City of Montgomery, 151 So. 856. In that case, the court held that a city which purchases gasoline outside of Alabama and stores it in a storage tank for use by it in its governmental functions is not subject to the gasoline tax imposed by the State upon storers of gasoline as defined by the General Acts of Alabama of 1931 and 1932.

It will be noted that the court in the case of the State of Alabama vs. City of Montgomery based its decision solely upon the proposition that a tax levied in general terms, with nothing to indicate that it was intended to apply to a city or county, will not be so held to apply to such cities, counties and towns. In other words, in the City of Montgomery case, the Court simply held that the wording of the act did not include, counties, cities or towns.

It will be noted that in the City of Montgomery case the court pointed out that:

"It is, of course, conceded by all that if it is a tax on the property or an essential element of its ownership, and not on an occupation or for a privilege, it is in violation of section 91 of the Constitution. The right of the state to tax a city as any other corporation except as prohibited or limited by the Constitution is not questioned.

"Since the privilege of storing is the basis of the tax, and for that purpose an excise may be levied, it is not controlled by section 91 of the Constitution, and it is immaterial to what use it is put after it is withdrawn from storage."

In other words, the court holds that this type of tax is not a tax on the property or an essential element of its ownership, but is an excise tax and that the basis of the tax is the privilege of storing.

I beg to refer you to Schedule 156.1, found at page 284 of the Revenue Act, Regular Session, 1935, H. B. No. 324 (Page 254 of Revenue Act). You will note that this schedule refers to the tax as an excise tax of 6c per gallon upon the selling distributing, storing or withdrawing from storage in this State for any use, gasoline as therein defined. I also beg to refer you to schedule 156, found on page 253 of the Revenue Act of Alabama of 1935, wherein the word "person" is defined as including persons, corporations, co-partnerships, companies, counties, municipal corporations, school boards, agencies of the State and associations. It seems that these two sections were written with full knowledge of what the Supreme Court of Alabama had decided in the case of State of Alabama vs. City of Montgomery referred to hereinabove.

Under the facts stated in your letter, it is my judgment that a county, city or town that purchases gasoline out of the State and handles it in the manner set out in your letter must pay the excise tax provided by the Revenue Act of 1935.

It will be noted that Section 156.1 covers both the storing or withdrawing from storage in this State, for any use.

The opinion of this office of April 1, 1935 was correct under the law of that date. Our opinion of April 1, 1935 follows the case of State of Alabama vs. City of Montgomery. However, since the opinion was rendered, the Legislature, in the Revenue Act of 1935, has changed the law. Our opinion has not been changed but the law has been changed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 4, 1936

Hon. L. W. Price,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

War veterans--exemption from license tax.

A war veteran engaged in the business of operating what is commonly known as a rolling store is not entitled to any exemption whatever from license taxes.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of February 15, 1936, which follows:

"Please refer to an Act for exemption to disabled world war veterans from payment of business license on pages 1057 and 1058, Act of the Legislature of 1935; and advise me whether or not a veteran entitled to the exemption may avail himself of same with regards the peddling of medicine or what is called Rawleigh's Products. These products are sold from an automobile instead of truck."

The veteran described in your letter is operating what is commonly known as a "rolling store." A person who travels from place to place in an automobile or truck which contains merchandise that he offers for sale at retail to the consumer is operating a rolling store. The last sentence of Section 1 of Act No. 494 approved September 13, 1935 (General Acts 1935 at page 1057) reads:

"Provided that no exemption, deduction or commutation shall be allowed any person from the license tax on what is commonly called rolling stores."

In view of this provision, this office has previously held that a veteran who operates what is commonly known as a "rolling store," is not entitled to any exemption whatever from license taxes. See Quarterly Report Attorney General October-December, 1935, p. 133.

As to what license should be paid by the veteran described in your letter, I call your attention to an opinion in the Quarterly Report of Attorney General October - December 1935, at page 274, which covers this subject in full.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 4, 1936

Hon. W. M. Vaughn,
Judge of Probate,
Dallas County,
Selma, Alabama.

National Guard—Certificate of exemption from poll tax effective
for the entire poll tax year.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Please advise me as to how to handle the names of members of the National Guard, in good standing, in making up the voting list. Under the law, it appears that the certificate of the commanding officer is good only for the month in which it is issued. Therefore, it appears to me that it would be improper to place the names of any of them on the voting list, which is permanent through the year. You may have rendered an opinion on this subject heretofore, but if so, I have not seen it."

In my opinion, if a member of the National Guard presents a certificate of exemption from poll tax, etc., legally issued to him under the authority of Section 11 of the Municipal Code of 1931 (Acts 1931, p. 687), it is your duty to place his name on the voting list of the county, provided he is qualified otherwise as an elector. It will be noted that the certificate provided for covers exemption from road duty, street tax and jury duty as well as exemption from the payment of poll tax. As to the first three duties listed, it may be that if the certificate is revoked for cause, the exemption then and there may be terminated (a question which I am not called upon to decide).

But if, at the time the poll tax would be due but for the exemption, the member of the National Guard has complied with the law providing the exemption and has presented a certificate evidencing that fact, he would be exempted from the payment of poll tax during the poll tax year, notwithstanding a subsequent revocation for cause of the certificate.

In *Shepherd v. Sartain*, 185 Ala. 439, 64 So. 57, the Court had under consideration subsection 6 of section 2061 of the Code of 1907 which provides:

"The following property and persons shall be exempt from taxation:

6. From poll tax all persons permanently disabled whose taxable property does not exceed \$500.00."

The Court there said:

"If the voter who exhibits the disability would excuse himself from the payment of any particular poll tax, he must assume the burden of

showing its initiation before the tax became due, and that his taxable property did not exceed \$500.00 at the time the tax became due. The ownership of less than that amount at other times during the year will not support the exemption, nor will the ownership of more than that amount at other times defeat it."

I think that this statement of the rule is applicable here.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

March 4, 1936

Hon. D. E. Laslie,
Judge of Probate, Macon County,
Tuskegee, Alabama.

Party held bound to pay poll tax for each year to be qualified to vote, regardless of fact that such tax has been paid for a total of twenty-five years.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of February 21, 1936, in which you request my opinion as follows:

"A man paid poll tax before he was 21 years old. That is, paid poll tax the fall of the year he was 20 and has paid poll tax every year since, but failed to pay the year he was 45; is he qualified to vote in the coming election in May? The total years paid is 25."

In my opinion the party mentioned in your request is not qualified to vote in the May elections.

According to the facts detailed by you, said party has paid poll tax for twenty-five years. If therefore, it is permissible for one to pay poll tax prior to the due date of October 1, prescribed by Section 194 of the Constitution, the party has fully complied with the law. However, this office has heretofore held in an opinion of May 8, 1930, to the Judge of Probate of Butler County, Greenville, Alabama, Biennial Report 1928-1930, p. 832, that poll tax cannot be paid in advance. It was there held that one who paid poll tax twice in 1928 and failed to pay in 1929 was not entitled to vote in the ensuing election.

The case of *Shepherd v. Sartain*, 185 Ala. 439, 458, Paragraph 22, 64 So. 57, modifies this opinion somewhat, the court saying that:

"Where the records show the payment by a voter of his poll taxes for a series of years, with a single omission, and shows also the payment of two such taxes for a single year, thereby showing that he has paid the number of taxes to which he was subject, it will be presumed, nothing appearing to the contrary, that one of the duplicated payments was intended for the omitted year, and it will be treated as so paid."

It is to be noted, however, that under the facts set out in your letter it cannot be presumed that the payment made at the age of twenty was intended as a substitute for the omitted payment when the citizen became forty-five, and accordingly it will not be presumed that payment has been made for that year.

You do not mention in your inquiry, that the party voted in the election following the payment of poll tax in his twentieth year. Presuming that he did vote, your attention is again directed to the *Shepherd v. Sartain* case, supra, where at page 456 of 185 Ala. the Court holds that one who pays poll tax prior to reaching the age of twenty-one and votes in an ensuing election, having of course reached his majority in the interim, is estopped from claiming exemption for paying poll taxes.

It would appear, therefore, that the party having exercised the privilege for which he has paid, cannot now be heard to say that payment for his twentieth year may be used for his forty-fifth year, assuming of course that he did not become 45 till after Oct. 1st.

Premises considered, it is my opinion that the party mention in your letter is not qualified to vote in the May elections.

See also opinion to Hon. Wm. W. Hill, Judge of Probate, Montgomery County, Montgomery, Alabama, March 3, 1936, copy of which is enclosed for your convenience.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 4, 1936.

Hon. J. S. Sandlin,
Sheriff, Morgan County,
Decatur, Alabama.

The judge of the county court is without authority to release a prisoner from jail when there is a grand jury indictment returnable to the circuit.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 9, 1936, in which you request my opinion as follows:

"Please render us an opinion on the following:

"Has the Judge of County Court authority to release a prisoner from jail, when there is a Grand Jury indictment, 'returnable' to Circuit Court."

My answer to your inquiry is in the negative, that is if I understand what you mean, when you say release from jail. I take it, you mean that judge of the county court made an order releasing the defendant without bail. If the defendant is being held under an indictment which emanated from the circuit court, the judge of the county court has no jurisdiction of the defendant nor of the offense, the circuit court having already assumed such jurisdiction, unless the right of the sheriff to hold such defendant has been put in question by a writ of Habeas Corpus, which must be addressed to the judge of the circuit or to the probate judge of the county. See Section 4310, Code of Alabama, 1923, which is as follows:

"Section 4310. To whom petition must be addressed.—When the person is confined in a county jail, or any other place, on a charge of felony, or under a commitment or an indictment for felony, the petition must be addressed to the nearest circuit judge, or to the probate judge of the county where the person is confined; and when the person is confined in the penitentiary, or under a sentence, judgment, decree, or order of the Supreme Court, or the circuit court, other than an indictment for felony, the petition must be addressed to the nearest circuit judge; in all other cases, it may be addressed to any one of them, or to the probate judge of the county; and when the person is confined in any other place than the county jail or the penitentiary, and on any other than a criminal charge, it may be addressed to any justice of the peace of the county, or to the probate judge thereof. All local or special laws in conflict herewith are expressly repealed."

From the above it is clear that the judge of the county court could not as such judge entertain such writ. It must be addressed to the judge of the circuit or to the judge of probate of the county as such and not to the judge of the county court. It is true in many instances the judge of probate and the judge of the county court is one and the same person, but the jurisdiction of the probate court and county court are entirely distinct and separate and as the judge of the county court, he has no jurisdiction in matters arising on Habeas Corpus.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 4, 1936.

Hon. M. C. Thomas,
Sheriff of Jackson County,
Scottsboro, Alabama.

County Jails in Alabama are required to have a watchman to look after the jail and inmates under Section 4879, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 6, 1936, in which you request my opinion as follows:

"Our jail here is old and dilapidated, and we have had many escapes here in the past few years on account of its age and weakness. It requires my constant attention to prevent escapes, and having no jailer it is working a hardship on me, as I have other duties that require my time in the administration of the office. So I am writing you if the commissioners of the county have the authority to allow me a jailer and he to be paid for his services of the general county fund. It is my understanding that other sheriffs throughout the State are furnished jailers by the county, and if it is legal I certainly want to also have one. The necessity of one here is admitted by our people, so I am asking you to please give me an opinion as to the law governing such cases."

Answering your request, I call your attention to Section 4879, Code of Alabama, 1923, which is as follows:

"Prisoners shall not be confined in any jail or prison in this State when such jail or prison is not provided with a deputy, watchman or attendant whose duty it shall be to watch the jail or prison at night for the prevention of escapes and fire, and to aid in case of sickness among the prisoners, and who shall have access to the jail or prison and to the prisoners. If the state prison inspector is satisfied, after inspection, that the construction and management of a jail is such as to render a night watchman unnecessary, he may by written order to the sheriff suspend the appointment of such watchman, this order to be subject to revocation at the discretion of the prison inspector. The sheriff, in case of a county jail, or the proper governing authority, in case of a municipal jail, shall appoint, direct and control said deputy, watchman or guard and the court of county commissioners or board of revenue, or the proper municipal governing authority, as the case may be, shall fix a reasonable salary and the same shall be paid out of the funds of the county or of the municipality, if it be a town or city jail, in which the jail is located."

Under the provisions of the above statute, you are entitled to a watchman. In fact, this statute makes it imperative.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 4, 1936.

Hon. J. Blocker Thornton,
Judge of the Circuit Court of Mobile County,
Mobile, Alabama.

Circuit Judges—Acts 1932, p. 301, providing traveling expenses allowance for Circuit Judges not applicable to Judge of Circuit composed of one county.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion dated February 17, 1935, as follows:

"I beg to acknowledge receipt and thank you for a copy of your opinion dated February 13, 1936, addressed to the Hon. R. B. Carr, Secretary, Association of Circuit Judges, Anniston, Alabama, defining the force, effect and status of the excerpt copies from, 'Acts of 1932, extra session, at page 301,' as follows:

" 'Provided, however, that Circuit Judges and Circuit Solicitors in judicial circuits of more than one county shall each receive the sum of \$100.00 per annum for each county of their judicial circuit over and above one and the said additional amounts to be a reimbursement of their reasonable expenses while in attendance on court outside of their home county.'

"I am one of the three Judges for the 13th Judicial Circuit of Alabama, and in 1934, under the appointment and orders of Chief Justice Anderson, I held court in Washington County two special terms, which is in the First Judicial District, and outside of the 13th Judicial District. I made out my bill for travelling and hotel expenses, but did not and have not heretofore made any claim for the \$100.00 under the provisions of Acts of 1932. The caption of the Act, *supra*, is as follows:

" 'AN ACT, Relating to the Salary or Compensation of Officers or Employees of the State, or of any Department thereof, whose compensation is paid out of the State Treasury.'

"I write to ask further amplification of your opinion so as to state whether or not the provision ruled on by you, limits the extra \$100.00 per annum only to those judges having more than one county in their circuits and is explanatory as to amounts they may receive? For illustration if a judge has five counties in his circuit and is ordered to hold court one week outside of his circuit can he claim \$400.00 for such service?

"2. Is it the purpose of the law to provide compensation for such judge who performs extra service outside of his Circuit, as in my case herein noted?"

Answering your first inquiry, it is my opinion that the 1932 Act, supra, provides for an expense allowance to Circuit Judges whose circuits are composed of more than one county and that the allowance is to reimburse the Judges for travel expenses incurred while performing their duties out of the counties of their respective residences, but **within** their respective circuits. It has no application to a Judge of a Circuit composed of only one county.

Your second inquiry must be answered in the negative. The traveling expenses of Circuit Judges who perform their duties, under orders of the Chief Justice, out of their circuits are provided for otherwise by law.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 5, 1936

Hon. T. W. Thagard,
County Solicitor, Butler County,
Greenville, Alabama.

Licenses—Peddlers of Medicine—

A person not having a fixed place of business but who goes to various places and sells his product is an itinerant vendor or peddler of medicine.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of some time ago, stating:

"The License Inspector of this county has cited a man for failure to take out a drug peddler's license, which is required under Schedule 104 of the 1935 Revenue Code.

"The Inspector as received a letter from an Attorney who says that he represents the man who was cited, in which the attorney says as follows: 'The facts in this case are as follows: C. A. Darby manufactures this medicine or has it manufactured under his formula and he then sells it at various places in the state. He has applied to the Judge of Probate here for a state license and has been advised that there was no provision for a license for selling medicine so long as he was not peddling it. Darby does not peddle his medicine, but has regular places at which he does business just as though he had a store or other place of business, and all his transactions in connection with his preparation are had at this place. In your county he goes to the school building in Georgiana, has been going there for some time, and he in turn donates a percentage of his sales to the school, he also pays the licenses required by the Town of Georgiana. In the recent Revenue Code I fail to find any provisions for a license for selling medicine other than peddlers.'

"The License Inspector informs me that as far as he knows the man Darby sells medicine in this county only at the colored school in Georgiana, but that both white and black people go to the school and buy it from him. I am not informed whether he makes a speech or passes out printed matter in order to sell his preparation but, assuming that he does not, is he liable for a peddler's license under Subdivision B of Schedule 104 of the License Code?

"Your opinion in this matter is requested because of the fact that I shall probably be called upon to prosecute him in the County Court if he fails to take out the license."

Schedule 104, subsection (b) levies a license on each itinerant vendor or peddler of medicine, etc. From your statement it appears that this party has no fixed place of business but goes to various places in the State and sells his products. It would appear that he is an itinerant vendor or dealer, even though he sells only at one place, to-wit, a negro school house in your county.

You state that this matter will probably come up in court and, of course, the full facts can there be ascertained.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 7, 1936

Hon. M. K. Marshall,
Tax Assessor, Randolph County,
Wedowee, Alabama.

Tax Assessor Demand Fee—

It is the duty of the Tax Assessor to make demand after December 31 on all persons who have failed to make return of their taxable property for assessment and to collect the demand fee of 50c as required and provided by Section 41 of the Revenue Act of 1935.

Opinion by Assistant General Moore.

Dear Sir:

I have your letter of February 15th, in which you state:

"Is it compulsory that I charge an assessor's fee for delinquent assessments since I am on a fee basis. I do not want to charge this fee unless it will be a legal charge against me.

"Also advise me if it is compulsory that the Tax Collector collect the delinquent fee where same is paid although delinquent but a demand has not been made."

In reply, I call your attention to Section 41 of the Revenue Act of 1935, which provides:

"Section 41. After the thirty-first day of December in each year, the Assessor shall in person or by deputy, make a demand upon all taxpayers who have failed to make return to him for a list of their taxable property, and such demand may be made by written notice left with the taxpayer at his residence or place of business, or sent postpaid by registered mail, with return receipt demanded, to the taxpayer's last known place of residence and it shall be the duty of such taxpayer to return such list to the Assessor on or before the third Monday in January following. For making this demand the Tax Assessor shall be entitled to a fee of fifty cents to be paid by the taxpayer, which shall be added to the tax receipt and collected with the tax."

You will note that by this provision the Tax Assessor is required to make a demand upon all taxpayers. This is a mandatory duty which he must do. It would follow that if he makes the demand, the fee accrues. Ordinarily the charging of the fee would be a matter with which the Tax Assessor is alone concerned, but by virtue of Section 23, the earnings of the Tax Assessor are definitely limited and all excess, over the amount fixed for his compensation and the expenses as fixed is payable into the County Treasury. It is therefore my judgment that the fee should be charged in all cases.

In answer to your second inquiry, I call to your attention opinion appearing in the Quarterly Report of the Attorney General at page 330.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 7, 1936

Hon. S. L. Johnson,
Clerk and Register Circuit Court,
Calhoun County,
Anniston, Alabama.

In cases where there are more than one defendant tried and convicted under one complaint or indictment, there should be a separate sentence for each defendant, but this should be a part of one general judgment. Therefore, in charging bill of costs only one final judgment should be included.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of sometime ago, in which you request my opinion as follows:

"Please give you opinion on the following question:

"In a criminal case where there is more than one defendant and there is no severance, the Court sentences the defendants separately and the clerk enters in the minutes a separate sentence.

"Question: is it proper to charge in the cost bill more than one final judgment "

Certainly there should be two separate and district sentences of each defendant, but this should be contained in one and the same judgment entry and should therefore be a part of the final judgment. Therefore, the bill of costs should contain only one final judgment. Quarterly Report, Attorney General, October - December, 1935, page 148. This opinion is to Hon. Hamp Draper, October 31, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 9, 1936

Hon. Gaston Scott, President,
State Highway Commission,
State Capitol,
Montgomery, Alabama.

Road to convict camp should be condemned by state and not by county.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of February 27th, 1936, requesting my opinion as follows:

"At the convict camp now being constructed near Cropwell we need a right of way for an additional road entering the camp to reduce travel distance working southwest. We were told when the site was selected that this could be arranged.

"It now develops that the county will have to condemn this right of way and since it is a matter of ingress to our camp Probate Judge M. W. Forman, St. Clair County, states that he is willing to condemn and pay the cost of the award but questions his right to condemn in this case and thinks the State should condemn in this case at the county's expense.

"Please give us your opinion on the above question."

In reply, I advise that the legislature has provided in Section 7477 of the Code of 1923 a method for condemning land for convict purposes which

should be followed in this case. Under this section, the proceedings should be brought in the name of the state.

The state is not authorized to condemn this land and charge the cost of same to the county, as the convict camp is a state camp and is not primarily for county purposes. It would be proper, however, for the county to contract with the state to pay the expenses provided such contract was made by the court of county commissioners or board of revenue for any of the purposes set forth in Subsection 23 of Section 6755 of the Code of 1923, as amended (Acts 1931, pages 759-762). Cf. *Stone v. State*, 223 Ala. 426, 136 So. 727.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 9, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Constitutional Amendment—

Whenever an amendment to the Constitution of Alabama, affecting only a county or a subdivision of a county or a municipality is submitted to the people for ratification or adoption, the county or municipality which said amendment affects, shall pay the expense of the Governor's Proclamation concerning such amendment.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of February 3, 1936, in which you ask:

"Are counties and municipalities responsible for expenses of Governor's Proclamation submitting amendments for ratification when such amendment relates to or affects only the county or municipality as provided in Section 233 of the Code of 1923."

It is my opinion that your question should be answered in the affirmative.

I call your attention to Section 233 of the 1923 Code of Alabama, which is as follows:

"233. Payment for publication of governor's proclamation submitting proposed amendment to constitution, affecting county or subdivision thereof.—Whenever an amendment to the constitution of Alabama, af-

fecting only a county or a subdivision of a county or a municipality, is submitted to the people for ratification or adoption, the county to which such amendment relates, or affects, shall pay the expense of the publication of the governor's proclamation concerning such amendment, and the court of county commissioners or board of revenue of the county where such amendment relates to a county or a part thereof, and the auditor, clerk, mayor, or other officer having authority to draw warrants on the treasury of such municipality, when such amendment relates to a municipality, shall, upon the presentation of a claim for the necessary amount to be paid, by the state for such publication, certified by the state auditor, make an order and draw a warrant payable to the state treasurer out of the funds of the said county or municipality as the case may be, and the custodian of the county funds or municipal funds as the case may be, shall pay the amount of said warrant to the treasurer of the State of Alabama."

It is my opinion that Act No. 365, S. B. 499, approved July 10, 1931 (General Acts 1931, p. 430) which provides as follows:

"Section 1. Unless otherwise stated in the Act or Resolution calling such election, whenever any special election is ordered by the Legislature upon any proposed amendment or amendments to the Constitution of this State, and said amendment affects only one municipality in this State, then if such municipality has as much or more than 68,000 and under 200,000 inhabitants according to the last or any subsequent Federal Census, and if no amendment or amendments other than those affecting said municipality are submitted to the voters of the State at said election, the expenses of holding such election, including the cost of publishing the notices and proclamation required by the Constitution, shall be paid by such municipality.

"Section 2. It shall be the duty of the State Auditor to ascertain the expense of such election, and within thirty days after the holding of the same, to present to and file with the Clerk of such municipality, a statement of said expense, duly certified by such officer, and the governing body of such municipality, by whatever name called, shall cause said expense to be paid out of the funds of the municipality to the Treasurer of the State of Alabama. Every such claim shall be a preferred claim against such municipality, and the courts may enforce by writ of mandamus performance of the duty herein entailed upon the Auditor and the members of the governing body of such municipality.

"Section 3. This Act shall be in force and effect on its passage and approval."

does not affect Section 233, supra, as both Acts have a field of operation and should be construed together.

For your information, I enclose a copy of an opinion of this office to Hon. Fleetwood Rice, Judge of Probate of Tuscaloosa County, rendered March 9, 1936.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 9, 1936

Hon. H. C. Hayes,
Deputy Solicitor,
Jackson County,
Scottsboro, Alabama.

The law provides that the Grand Jury shall make examination of the books, accounts and bond of the different officers, I find no authority of law for this being delegated to a committee and if this is done and the committee works while the Grand Jury is recessed, there is no authority of law for paying them their per diem for the time which the Grand Jury was recessed.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 6, 1936, in which you request my opinion as follows:

"I would like to have your opinion on the following proposition:

"At the regular session of the Grand Jury the foreman of that body appointed a committee composed of certain of its members to make a special investigation of the county records. The committee was allowed three days to make its investigation, and during this period the Grand Jury, proper, was recessed. Are the members of the committee entitled to compensation for the three day period devoted to Committee work?"

In answering your inquiry, permit me to say that I know of no authority of law for the Grand Jury appointing a committee to examine the books and accounts of county officers. The law says this examination shall be made by the Grand Jury as a whole.

Section 8670, Code of Alabama, 1923, which is as follows:

"It is the duty of the grand jury to examine into the condition of the county treasury, and the bonds of all county officers, with regard to their correctness and sufficiency, and to report upon the same; to inquire into all indictable offenses committed or triable within the county, which, as they may be advised by the court, are not barred by the lapse of time, or some other cause; and to perform such other duties as are, or may be by law required of them."

The Grand Jurors are supposed to be paid only while the Grand Jury is in session and if it recesses the whole jury is recessed and none can be paid their per diem. I find no authority of law for paying the members of the committee from the Grand Jury such as you describe for work done at a time when the Grand Jury was recessed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 13, 1936

Hon. James E. Jones,
County Solicitor,
Conecuh County,
Evergreen, Alabama.

Solicitor's fees—Violation of Fish and Game Laws—

1. Under an Act of the Legislature approved September 9, 1935, Senate Bill 226, Swift, the solicitor or deputy solicitor of any county is required to appear and prosecute any violation of the provisions of the game and fish laws or the rules and regulations provided thereunder.

2. Where a conviction is obtained, a solicitor's fee of \$5.00 is imposed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 23rd, in which you request my opinion as follows:

"I am writing you for an opinion of an Act passed at the last session of the Legislature, Section 51 of an Act approved on August 12th, 1935, (No. 240-S. 226 Swift) in regard to the game and fish laws of the State of Alabama.

"This law provides for a Solicitor's fee of \$5.00 but there is some doubt as to whether it is to be paid in all cases or just in cases where the Solicitor prosecutes the case. What I wish an opinion on is whether or not the fee of \$5.00 is payable in all cases whether there is a conviction by trial or a plea of guilty.

"Please let me have your opinion at your earliest convenience as we are holding up some cases here until we get same."

In reply I call to your attention Section 51 of the Act to which you refer, which provides:

"Section 51. The solicitor of any county, or deputy solicitor of any county, in which any violation of the provisions of the game and fish laws or the rules and regulations provided thereunder shall have occurred, shall appear on behalf of the State and prosecute the offender. When a conviction has been obtained and a fine or penalty imposed in the court of a justice of the peace or a court of similar jurisdiction, there shall be attached, in addition to the other costs, a fee of five (\$5.00) dollars as solicitor's fee."

As you will note, the solicitor is required to appear and prosecute. This is a mandatory requirement. He being charged with this duty, it is my opinion that the solicitor's fee attaches in all cases of convictions, whether by trial or by plea of guilty.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 18, 1936

Dr. A. H. Collins,
Commissioner, Department of Public Welfare,
Montgomery, Alabama.

Public Welfare Department - Confederate Pensioners -

1. Confederate Veterans required to comply with all requirements of Senate Bill 397, Simpson, (Acts, 1935 p. 967) for eligibility for old age assistance.

2. No set procedure is required for making investigation of Confederate Pensioner's eligibility requirements for old age assistance when Confederate Pensioner fails to make application.

3. Application filed by State Department of Public Welfare for Confederate Pensioner Veteran must be heard and passed upon as if filed by such person himself.

4. No definite time limit set within which applications shall be made for Confederate Veterans by the State Department of Public Welfare.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of March 6, 1936 requesting my opinion as follows:

"We would appreciate having your opinion on the following questions regarding Section 17 of SB-397-Simpson, approved September 14, 1935. (Acts 1935 p. 967).

"1. Under what circumstances would a Confederate Veteran 'also be entitled to an old age pension under the terms of this Act' (SB-397-Simpson, approved September 14, 1935)?

"2. In cases where the Confederate Pensioner fails to file application for Old Age Assistance, how is the State Department of Public Welfare to ascertain for which pensioner to "make application on his behalf in the county in which he resides" without a complete investi-

gation of the Confederate Pensioner's income, residence, legally responsible relatives, etc?

"3. After such an investigation, as referred to in Question No. 3 has been made, and the Confederate Pensioner found to be eligible also for Old Age Assistance, and the State Department of Public Welfare has made application for Old Age Assistance on his behalf, why should the Application 'be heard and passed upon as if filed by such person himself' (SB-397-Simpson, approved September 14, 1935) since our investigation has already been made to determine if the Confederate Pensioner is eligible also for Old Age Assistance?

"4. Does SB-397 - Simpson, approved September 14, 1935, imply any definite time limit to the State Department's making application for Old Age assistance on behalf of Confederate Pensioners since the law says: 'if any person shall fail to make such application on or before March 1, 1936, the State Department shall as soon as practicable thereafter make application, etc'?"

In reply to your request, I wish to advise that, in my opinion, your first question is answered by Section 3 of Senate Bill 397 - Simpson, referred to in your request, which section sets out the requirements for old age pensions generally. I find no provisions in the above named Act exempting Confederate Veterans from the requirements set out in said Section 3 of said Act.

In reply to your second question, I wish to advise that SB-397-Simpson, supra, makes no provision for procedure in determining which of the Confederate Veterans now receiving a Confederate Pension may be eligible to also receive old age assistance under the terms of this law. In my judgment, the matter of procedure in making the proper investigations of the Confederate Pensioners status in order to qualify him under the terms of the above named Senate Bill 397-Simpson is left to the discretion of the State Department of Public Welfare. I might add that I know of no better method to meet the demands of Section 3 of said Senate Bill 397-Simpson, than the method suggested in your inquiry of making a complete investigation of the Confederate Pensioner's qualifications in the county in which he resides.

In reply to your third inquiry, I wish to advise that SB-397-Simpson, contains a clear mandate that the application here referred to "be heard and passed upon as if filed by such person himself." Your question involves a question of reasons for legislation rather than legislative intent in the premises, and this office is not in position to offer reasons that promote legislation. Since the above named Act commands that such hearing be had, however, it is apparent that the Legislature intended that the involuntary applicant for old age assistance should be given an opportunity to show cause why his name should not be enrolled on the old age pension list.

In reply to your fourth inquiry, I wish to advise that in my judgment no definite time limit is set within which the State Department of Public Welfare shall make applications for old age assistance on behalf of Confederate Pensioners, who, for any reason fails to make said application. Section 17 of

Senate Bill 397-Simpson, supra, provides that such application be made on behalf of the Confederate Veteran or widow of said Confederate Veteran as soon after March 1, 1936 as practicable, in the county wherein he resides. The word "practicable" has been judicially defined as follows: Words and Phrases 4th Series, Vol. 3, page 134:

"The usual meaning of the word 'practicable' is: 'That may be practiced or performed; capable of being put into practice, done or accomplished; feasible; as a practicable method;***' "

It is my opinion that the legislative intent here is that the applications here referred to shall be filed as rapidly as the circumstances governing the situations will permit. This to be determined by the Department of Public Welfare.

I wish to refer you to opinions addressed to you under date of February 10, 1936 and February 12, 1936.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 18, 1936

Hon. Haygood Paterson,
Sheriff, Montgomery, County,
Montgomery, Alabama.

Court costs - costs in divorce case not subject to claim of exemptions.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I am in receipt of your letter of February 28, 1936, which is as follows:

"I, Haygood Paterson, as Sheriff of Montgomery County, Alabama, have levied upon one Oldsmobile automobile as the property of Earl S. O'Neal, pursuant to an execution issued out of the Circuit Court of Montgomery County, Alabama, in Equity, in the case of George H. Jones, Jr., Register vs. Earl S. O'Neal wherein Mr. Jones as Register is attempting to collect \$72.70 as Court Costs in the case of O'Neal vs O'Neal where Mrs. O'Neal was granted a divorce against Earl S. O'Neal which divorce was granted on the grounds of cruelty. The decree of said divorce granted certain sums for maintenance and support of the children, but this execution is for the Court Costs accruing on the main case which costs were taxed in the decree against the Defendant, Earls S. O'Neal has filed his certificate of exemption which said certificate is in words and figures as follows:

STATE OF ALABAMA

MONTGOMERY COUNTY

CERTIFICATE OF EXEMPTION

Before me, A. J. Harris, Jr., a Notary Public, in and for said State and County, personally appeared Earl S. O'Neal, who being known to me and being by me first duly sworn, on oath, deposes and says that:

He is a resident of Montgomery County, State of Alabama, and that he hereby makes known and declares that he has selected and claimed as exempted to him under the Constitution and laws of the State of Alabama, the following described personal property:

1. Wearing Apparel
2. An Oldsmobile automobile not exceeding in value \$750.00, allowed under section 7886 of the Code of Alabama.
3. Wages, exemption allowed under sections 7887 and 7886 of the Code of Alabama.

E. S. O'NEAL,

"Sworn to and subscribed before me this the 21st day of February, 1936. A. J. HARRIS, JR.

"The Register in Chancery has filed exceptions to the exemptions and the matter is in abeyance by agreement pending a ruling from you. The specific question I would like for you to answer is: Can the Respondent, O'Neal, claim his exemptions as against said execution for costs and whether or not I, as Sheriff, should release said levy or conclude the same by selling said property according to law?"

I am of the opinion that the respondent cannot claim exemptions against execution for costs in this case and that the property should therefore be disposed of according to law.

Exemptions are allowed from "debts contracted" (Section 204, Constitution and Section 7887 of the Code) or from "debts" (Section 7886 of the Code 1923. These two terms have been held to be synonymous. *Crabtree v. Kirby*, 225 Ala. 20, 142 So. 32.

A divorce action is not founded on a contract but is an action in reference to the violation of a duty imposed, or a right granted, by law. It has been held to be quasi criminal (*Stafford vs. Stafford*, 41 Tex. 111), and of the character of criminal proceedings (*Barber vs. Root*, 10 Mass. 260; *Matchin v. Matchin*, 6 Pa. 332). There seems to be no basis on which respondent may claim exemptions on the theory that costs in a divorce case are contractual and therefore "debts" within the contemplation of our statutes and constitution.

Our court has repeatedly held that alimony and attorneys' fees in divorce cases are not subject to exemption. Judge Sayre in the case of Ford vs. Ford, 201 Ala. 519, 78 So. 873, stated:

"Appellant in response to a levy upon his land set up a claim of homestead exemption. The decree for alimony and attorney's fee was not a 'debt contracted' within the meaning of the Constitution and statute enacted in pursuance thereof . . . the claim of exemption cannot be maintained."

In Littleton v. Littleton, 224 Ala. 103, 139 So. 335, the court held similarly in reference to personal property. Said the court:

"(5) The decree for alimony and attorneys' fee was not a "debt contracted" within the meaning of our Constitution and statutes, and defendant's claim of exemption as to the garnished sum was properly disallowed."

Costs partake of the nature of the suit. As summarized in the case of Morscheimer vs. Wood, 78 So. 200, the court stated;

"It has been definitely determined that costs partake of the nature of the suit * * *."

Since the judgment in this case is not subject to exemptions, court costs would not be subject to exemption. Further, as attorney's are not subject to claim of exemptions, even more so would court costs not be subject to claim of exemption.

While this particular type case has apparently not been decided by our courts, the attitude of the Alabama Supreme Court is indicated in the case of Crabtree vs. Kirby (1932) Supra, where the court held that court costs in a statutory suit in equity to fix and declare a disputed boundary line were not subject to a claim of homestead exemption.

See also Jones v. Tarleton, 16 Ala. App. 95; 78 So. 643, relating solely to costs.

I am therefore of the opinion that in the instant case, the respondent is not entitled to claim exemptions and his property should be sold in accordance with the provisions of the law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 18, 1936.

Hon. J. A. Keller, Superintendent,
State Department of Education,
Capitol.

School officials may pay salaries of teachers employed to teach children in convalescent homes provided by the State, regardless of residence of the pupil.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of January 29, 1936 in which you request my opinion as follows:

"Inquiries have come to me from the school officials of Birmingham and Jefferson County asking whether they may pay the salary of a teacher or teachers, assigned to teach children of school age in the convalescent home of the Crippled Children's Clinic located in the city of Birmingham.

"For your information, permit me to say that under Federal Social Security Act public funds are provided from federal and state sources under a cooperative plan for aiding in hospitalization and convalescent care of crippled children. At Birmingham and Mobile convalescent homes are being provided and in these homes there will be a large number of children who will be recuperating after having undergone operations. Many of these children will be confined to these homes for several months, and some for a period of twelve months. Convalescent homes offer a splendid opportunity for providing school instruction for these children during their stay therein, thus enabling them to keep up with their studies while away from home.

"While a large number of the children in the convalescent homes will be from the cities and counties in which the convalescent homes are located, some children will be placed in these homes from other counties and cities in the state. It is highly important that educational opportunities be given them.

"In view of these facts, the question is whether funds can be used for the purpose named, since some of the children will be from counties not under the jurisdiction of the administrative unit in which the home is located. Of course, it is understood that the instruction will be under the direction of the county or city boards of education in which the convalescent home is located, and that the pupils will be instructed by properly certified teachers."

In my opinion, the salary of such teachers as may be assigned to teach the children of school age convalescing in the homes provided for that purpose may be properly paid by the school officials regardless of the residence of said children. Section 86 of the Alabama School Code of 1927 places the general administration and supervision of the public schools of the educa-

tional interests of each county, with the exception of cities having a city board of education, in the County Board of Education.

Section 97 of the Alabama School Code of 1927 provides that the educational policy of the county may be determined by the County Board of Education "with and on the advice of the County Superintendent of Education."

Section 117 authorizes the County Board of Education, upon the written recommendation of the County Superintendent to appoint all principals, teachers, etc.

Sections 206, 207 and 229, respectively, grant power to the City Board of Education, through the City Superintendent of Schools, to exercise control and supervision over the public schools of the city, to determine the educational policy of such city and to appoint principals, teachers, etc. for such educational institutions as may be required.

Section 203 provides for the attendance of City Schools by children without the city as follows:

"Attendance of City Schools By Children Without The City.—City and County Boards of Education shall have authority to reach agreements whereby children in the City may attend the schools in the County, and whereby the children in the County may attend the schools in the City, and they shall do so when the school in the City or in the County, as the case may be, is nearer to such pupils. In the event the said Boards do not reach agreements for such attendance, the matter shall be referred by either Board to the State Superintendent of Education who shall, after investigation, issue an order relative to same which shall be binding on both Boards. **Other non-resident pupils may be admitted on such terms as the Board of Education of the City may prescribe.**"

See Board of Education of Jefferson County et al v. State ex rel Kutchins et al 222 Ala. 70, 131 So. 239.

From the foregoing sections, it may readily be seen that the County Board of Education, or the City Board of Education, as the case may be, has full authority to employ such teachers as may be necessary for the instruction of convalescent children who are residents of such county or city.

Granting, therefore, the authority to employ teachers for convalescent homes, the inmates of which are all residents of the county, we are confronted with the more difficult question as to whether the school officials may use the funds provided where some of the children are from counties "not under the jurisdiction of the administrative unit in which the home is located." It is to be noted that Section 203, *supra*, provides in part as follows:

"Other non-resident pupils may be admitted on such terms as the Board of Education of the City may prescribe."

The Supreme Court of Alabama, dealing with Section 203, has stated that:

"A field of operation, if such there be, and construction should be given this enactment that it will not be rendered repugnant to organic law."

Board of Education of Jefferson County v. State, 222 Ala. 70, 73, 131 So. 239.

It does not necessitate a tortured construction of the provision above cited to warrant the conclusion that the words "other non-resident" may include non-residents of the county, as well as of the city. Indeed, such a construction is necessary in order to give the section that "field of operation" which the Supreme Court has held necessary.

Accordingly, the school officials may pay the salary of the teachers employed to teach the children recuperating in the convalescent homes, as stated in your letter, regardless of the residence of such children.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 18, 1936.

Hon. A. H. Howard,
Tax Collector, Macon County,
Tuskegee, Alabama.

Sale of land for taxes.

1. Tax Collector required to file his docket of delinquents with the Probate Judge on or before the first day of March.

2. Probate Judge must issue a notice to delinquents as speedily as possible, which notice must be served by the Tax Collector by one of the methods provided by Section 217 of the General Revenue Act of 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 4th in which you state:

"There seems to be quite a variance in the interpretation of citation period for 1935 taxes which are delinquent. So as to make it clear to the people of Macon County, won't you please give me a ruling as to whether citations are to be served now, or April 1, as tax payers here seem to believe."

In reply I advise that I do not see how I can make the matter any clearer than do the statutes. I call your attention to the following:

Section 214 of the Revenue Act of 1935, empowers the Probate Court to order the sale of lands for delinquent taxes.

Section 215 provides for the Tax Collector to file his docket of delinquents with the Probate Judge.

Section 216 gives further details of such docket and provides:

"Such book shall be delivered to the Judge of Probate on or before the first day of March, but if from any cause there has been a failure to deliver the same by that time, it may be delivered thereafter."

I do not interpret this as a blanket extension of the time which the Tax Collector is required to deliver the book to the Probate Judge. It commands him to deliver it on or before the first day of March, but merely provides that his failure to do so by that time shall not be fatal.

Section 217 provides substantially as follows: That "on receiving such book and as speedily as practicable the Judge of Probate shall issue a notice addressed to each person against whom any unpaid taxes are assessed, as shown by such book." Then follows the form of the notice and the provision for service.

"As speedily as practicable," would indicate that immediately upon receiving the book, the notices must be issued and served with all diligence. I find no authority and know of no statute authorizing the postponement of the filing of the docket by the Tax Collector with the Probate Judge or the postponement of the issue of the notice by the Probate Judge and the service thereof by the Tax Collector until April 1, or some other arbitrarily chosen date. The book is required to be delivered to the Probate Judge on or before the first day of March and the notices are to be issued as speedily as practicable thereafter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 18, 1936.

Hon. H. B. Hamner,
County Superintendent of Education,
Russell County,
Seale, Alabama.

Schools—term of trustees elected for definite term cannot be extended by County Board of Education (Section 133, School Code of 1927, amended by Acts 1935, p. 1090).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 4, 1936, which is as follows:

"In May, 1934, at every school of Russell County, there were held mass meetings for the purpose of nominating six people for each school for school trustees. The County Board of Education then selected from the six people so nominated, three to serve as trustees for each school for a period of two years, from July 1, 1934 until June 30, 1936.

"Would the county board of education now have authority to increase the term of these trustees without the people's nominating anyone else? The County Board, in other words, wants the same trustees throughout the county to serve for another two year period, that is from July 1, 1936 until June 30, 1938. Would it be legal to extend their term this two years entirely by the action of the County Board of Education?"

I am of the opinion that your inquiry should be answered in the negative.

School trustees are elected under the provisions of Section 133 of the School Code of 1927, as amended by Acts 1935, p. 1090. This office has heretofore ruled that trustees so elected serve for such term as may be fixed by the County Board of Education.—**Biennial Report of Attorney General, 1928-1930, pp. 307 and 380.** In my opinion, when the County Board of Education fixes a definite term, said term cannot be extended by them. New trustees should be elected under the provisions of Section 133 of the School Code as amended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 23, 1936.

Hon. Roy L. Smith,
Attorney for County Commission,
of Russell County,
Phenix City, Alabama.

Witnesses—no time limiting the filing of claims for witness fees in criminal cases that are not pressed. Same are payable out of fine and forfeiture fund and not out of general fund.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 7, 1936, which is as follows:

"The County Depository of Russell County and the County Commission of Russell County have had presented to them for registration

and payment a series of witness certificates which had endorsed on the back thereof, on each certificate, the fact that the case was nolle prosequed by the State. These witness certificates were issued by the Clerk of the Circuit Court of Russell County to these witnesses, as witnesses for the State at the Spring Term 1925 and Fall Term 1924 of said Court.

"Please advise the Phenix-Girard Bank, County Depository, whether or not these certificates should be registered and if allowed to be registered, should they be paid?

"As I understand the procedure, witness certificates not presented within six years for registration and payment are barred, provided the court cost has been deposited for the payment of the same.

"I also understand that any funds in the fine and forfeiture fund for the benefit of witnesses which goes unclaimed for a period of four years automatically becomes a fund to be transferred to the general funds of the County. The County Commission would like to know whether or not they will be required to pay these certificates out of the general fund, in the event any funds have been transferred from the fine and forfeiture fund to the general fund, which had been placed in the fine and forfeiture fund for the benefit of these certificates."

In answer to your first inquiry, I am of the opinion that the witness claims in question are subject to registration and payment against the fine and forfeiture fund. This office has heretofore ruled that there is no time limiting the filing of claims for witness fees in criminal cases where a nolle prosequi is entered.—**Opinion of Attorney General to Clerk of Circuit Court of Madison County on July 17, 1935; Biennial Report of Attorney General, 1930-1932, pp. 316, 440. See also Briggs v. Coleman, 51 Ala. 561; Sessions and Leary v. Boykin, 78 Ala. 328.**

Section 7245, Code of 1923, which provides a limitation of six years for presenting witness claims, is applicable to only witness claims in civil cases.—**Biennial Report of Attorney General, 1930-1932, p. 316, Supra.**

Section 304, Code of 1923, provides for the transfer of the fine and forfeiture fund to the general fund. Said section provides as follows:

"304. Transfer of the fine and forfeiture fund to general fund.—The county treasurer of any county in this State may transfer any balance on hand at the end of the fiscal year of the fine and forfeiture fund in excess of the registered claim and lawful claims or charges against said fund to the general fund or to any special fund to which by resolution of the board of revenue, or court of county commissioners, expressed in writing and spread upon the minutes of the court, he may be directed."

I am unable to find any provision for an automatic transfer every four years to which you refer.

I am of the opinion that your second inquiry should be answered in the negative. I know of no provision under the general law which authorizes a payment of witness claims out of the general fund.

The above answers to both of your inquiries are based on the assumption that your county is operating under the general law in respect to the matters presented.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 25, 1936.

Hon. H. B. Hamner,
County Superintendent of Education,
Russell County,
Seale, Alabama.

Schools—warrant issued March, 1935 and due October 1, 1936 cannot be extended but may be refunded under the provisions of Section 11 of Act No. 300, S. 351, approved September 2, 1935 (Acts 1935, p. 728). Borrowing money for extending school term is governed by Section 9 of said Act.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 4, 1936, which is as follows

"In March, 1935, the Russell County Board of Education, before the budget law affecting county boards of education was passed, sold a district tax warrant for \$1000.00, principal and interest due Sept. 30, 1936. Both principal and interest are to be paid out of the district tax collected during the year beginning Oct. 1, 1935 and ending Sept. 30, 1936. The proceeds from the sale of the warrant were used in the district to extend the school term in the Spring of 1935.

"Under the budget law affecting county boards of education could the due date of this warrant be extended one year, from Sept. 30, 1936 until Sept. 30, 1937, thereby releasing this present year's district tax in that district to extend school term this present spring? The man to whom the warrant was sold would probably be willing to wait another year for his \$1000.00 but he wants to know that the extension of the one year would be legal?

"Would it be legal under the budget law to issue an entirely new warrant to another person, due Sept. 30, 1937, the proceeds of the sale of which are to be used for extending the school term in the spring of 1936?"

I am of the opinion that your first inquiry should be answered in the negative. I know of no authority of law authorizing the extension of the note in question. However, since the debt was incurred prior to July, 1935,

same is subject to refund under the provisions of Section 11 of Act No. 300, S. 351, approved September 1, 1935, (Acts 1935, p. 728) which is as follows:

"Section 11. **WARRANT MAY BE ISSUED TO PAY DEBTS CREATED PRIOR TO JULY 1, 1935.** — In order to pay debts not otherwise funded which were incurred for legitimate obligations prior to the first day of July, 1935, any county board of education or any city board of education may borrow money and as security therefor, or in payment of such loans shall issue callable warrants or execute promissory notes bearing interest at a rate of not to exceed six per cent per annum, payable at such time as may be agreed upon; or may sell such warrants or notes at par and use the proceeds in the settlement of such debts. All warrants or notes so issued shall be payable out of such school funds of the county or city as may be available for such purposes. Payments of principal and interest on such warrants or certificates of indebtedness shall be arranged so as to require approximately equal payments each year over a period of not to exceed fifteen (15) years. When these outstanding debts have been funded in accordance with the provisions of this section, no other warrants may be issued or debts incurred, except in accordance with the provisions of this Act."

The answer to your second inquiry is governed by Section 9 of Act No. 300, supra, which is as follows:

"Section 9. **FUND MAY BE BORROWED AGAINST REVENUES OF CURRENT YEAR.**—Any county board of education or any city board of education shall have authority upon the recommendation of the county superintendent of education or city superintendent of education, as the case may be, to borrow money on the credit of the school fund of that county or city to meet the salaries of teachers and other current expenses when the current funds on hand are not sufficient to meet the same, and as security therefor, to pledge the current revenues of the current fiscal year. It shall be the duty of the county board of education and the county superintendent of education or city board of education and city superintendent of education to secure such a loan if practicable, when the current funds on hand are not sufficient promptly to pay teacher's salaries and other current expenses. All such current loans shall be due and payable not later than the end of that fiscal year. Provided, however, that the county board of education or the city board of education may issue certificates of indebtedness for payment of current expenses which are due when funds on hand are not sufficient to pay such obligations and when an adequate loan cannot be secured. Such certificates of indebtedness shall become due and payable not later than the close of the fiscal year in which they are issued and shall pledge the current revenues of that fiscal year. At no time shall loans be secured or certificates of indebtedness be issued for current expenses during any year which shall pledge school revenues of any other fiscal year. The amount which is borrowed either by loan or certificate of indebtedness, shall at no time exceed one-third of the sum paid for all current expenses, including teachers' salaries during the preceding school year. Boards of education shall have authority to pay interest at the rate of not exceeding six per cent (6%) per annum on such loans or such certificates of indebtedness as may be issued."

In issuing certificates of indebtedness under this section its terms must be strictly followed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 26, 1936.

Dr. A. H. Collins,
Director of Public Welfare,
Capitol.

Department of Public Welfare—

1. The term "County governing body" held not to include city governing bodies.
 2. The term "County treasury" as used in S. B. 397—Simpson, Acts of 1935, page 967, Section 2 held not to include city treasuries.
 3. City governing bodies held not charged with the duty to provide for old age assistance under Acts of 1935, page 967.
 4. The term "general fund of the county" as used in Section 6, Acts of 1935, page 967 held not to apply to cities.
 5. Estimates of amount to be expended by county for old age assistance for "ensuing three months" held to be made by "County Board of Public Welfare."
 6. Payments to counties for expenditures "during ensuing three months" held to be payable in advance under the requirement that state payments be regulated so as to reimburse counties for any amount expended in excess of estimated amount for "ensuing three months."
- (1) Amount to be increased or decreased according to expenditure of county during previous three months as measured by estimated amount.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of March 9th in which you request my opinion as follows:

"Will you please give me an official opinion concerning the following points relative to the Old Age Pension Act No. 448 (S. 397—Simpson):

"1. Does the term "County governing body" as defined in section 1 of the Act include city governing bodies?

"2. Does the term "County treasury" as used in Section 2 of the Act include city treasuries?

"3. If the answers to question 1 and 2 above are affirmative are all cities to be dealt with as independent units in the administration of the Act?

"4. If the answers to the questions 1 and 2 above are negative are cities charged with the duty "to provide a reasonable subsistence in proportion to the accustomed standard of living of the applicant to each person eligible for an old age pension under the provisions of this Act"? (See Section 4.)

"5. Does the term "general fund of the county" as used in Section 6 apply to cities as well as counties?

"6. Section 15 of the Act states that "the State of Alabama shall quarterly, upon requisition of the State Department, pay each county a sum of money equivalent to three-fourths of the amount estimated to be expended by the county during the ensuing three months for relief for each old age pensioner.' By whom is this estimate to be made? It appears from Section 19 that the 'County Board' makes this estimate. In Section 1 it is stated that 'the term 'County Board' as used in this Act shall mean the County Board of Public Welfare'.

"7. In Section 16 of the Act it appears that state and federal funds for Old Age Pensions are to be available in advance to the county upon the basis of estimates of expenditures 'during the ensuing three months'. In Section 26 it appears that the State funds are made available to the counties in the form of reimbursements. Will you give me an opinion on these two sections as they pertain to the Administration of State and Federal funds."

In my opinion, your first question must be answered in the negative. I refer you to Acts of 1935, page 967, Section 1 which provides in part as follows:

"The term 'county governing body' as used in this Act shall mean the Board of County Commissioners, Board of Revenue, Court of County Commissioners or other court or board of like jurisdiction of a County in this State . . ."

The terms "county governing body" and "city governing body" are two separate and distinct political subdivisions, one geographically included within the other, but in respect to government, they are entirely separate and distinct. Since the law provides for both forms of government separately, in my judgment, the Act here in question does not contemplate the use of these terms synonymously.

In reply to your question numbered two, I wish to advise that for reasons set out in answer to your question numbered one, it must necessarily follow that the answer here must be in the negative.

For answer to your third question, I wish to refer you to the answer of your questions numbered one and two.

Your fourth question must be answered in the negative. I refer you to Section 4 of the above named Act which sets out the only requirements of said Act placed upon the political subdivisions of the State for the purposes here named. You will note that this section sets requirements upon the "county governing body" only.

Your question numbered five must likewise be answered in the negative. The "general fund of the county", in my judgment, under the provisions of the law does not contemplate city funds. Section 6 of the Act referred to by you uses the term "County governing body" exclusively, which is defined by Section 1 of said Act to be applicable to the county. (See further, reasons set out in answer to question numbered one.)

In reply to your sixth question, I wish to advise that in my opinion, the "County Board" or "County Board of Public Welfare" is required to make the estimate of the amount to be expended by the county during the ensuing three months. I refer you to Sections 1 and 18 of the said Act which provide in part as follows:

"The term 'County Board' as used in this Act shall mean the County Board of Public Welfare."

"(2) One-half of such funds shall be apportioned to the several County Departments in the proportion to the estimate of the County Board of the total sum, to be expended by their counties for old age pensions in the next quarter, reduced or increased, as the case may be, in proportion to any sum which the State Board finds that any County Board in its estimate for any prior quarter was greater or less than the amount actually paid in old age pensions. The State of Alabama shall pay to the County Departments the amounts so apportioned at such times and under such rules relative to such payments as may be prescribed by the State Department."

In reply to your question numbered seven, I wish to refer you to Section 16 of the above named Act which provides in part as follows:

"Section 16. The State of Alabama shall quarterly, upon requisition of the State Department, pay each county a sum in money equivalent to three-fourths of the amount estimated to be expended by the county during the ensuing three months for relief for each old age pensioner who has been granted relief under the provisions of this Act, increased or decreased, as the case may be, by any sum which for any prior quarter was greater or less than three fourths of the amount actually expended by the County under the provisions of this Act."

You will note from the above quoted sections the commands for payment in advance are for the ensuing three months but makes a provision that said amount shall be any sum which for any prior quarter was greater or less than three-fourths of the amount actually expended by the county under the provisions of this Act.

Referring to Section 26 of said Act, in my judgment payments to the counties here considered amount to reimbursement for any funds the county may have expended, in excess of the estimated amount for "the three months ensuing". The provisions of Section 26 of the said Act, *supra*, provide for distribution in case of shortage of funds by either the State or County Departments of Public Welfare but do not change the requirements of Section 16.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 26, 1936.

Hon. M. F. Elrod, Chairman,
Board of Revenue, Marshall County,
Guntersville, Alabama.

Counties—under the provisions of Section 7 of Act No. 379, H. B. 191, approved September 9, 1935, (General Acts 1935, p. 803), known as the "County Financial Control Act," no warrant or order for money shall be issued until funds are available for its payment.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 12, 1936, which is as follows:

"In view of Section 7 of the Lee Act or County Financial Control Act, Acts of 1935, page 903, what action shall I take with regard to current claims audited and allowed by the Board of Revenue?

Section 7 of Act No. 379, H. B. 191, approved Sept. 9, 1935, (General Acts, 1935, p. 803), known as the "County Financial Control Act", provides as follows:

"Section 7. NO WARRANTS ISSUED UNTIL CASH IS AVAILABLE. No warrant or order for money shall be issued in pursuance of authority of the Board of Revenue, County Commissioners or other like governing body until funds are available for its payment upon presentation to the Treasurer or depository. It shall be the duty of the Board of Revenue, County Commissioners or other like governing body, to provide and appropriate funds for paying warrants issued upon orders drawn by other

county officials in pursuance of law, which orders are not required by law to be approved and authorized by such Board."

In view of the above, it is my opinion that no warrant or order shall be issued until funds are available for its payment. This is true although the claim may have been audited and allowed by the Board of Revenue. The claims in question will have to be held until there is money available for their payment before warrants can be issued for same.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

March 26, 1936.

Hon. W. A. Austin, Sheriff,
Elmore County,
Wetumpka, Alabama.

1. Probate Court exercising jurisdiction of Juvenile Court—Sheriff's costs and fees same as allowed for like services in Circuit Court, and are paid by the county out of the General Fund.

2. Sheriff allowed only \$5.00 for summoning jury in capital cases which is paid out of the County Treasury. Sheriff allowed reasonable amount.

3. Sheriffs allowed reasonable amount for use of his automobile when used in performing his duties in non-support cases.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of January 17, 1936, in which you state:

"Since I have been Sheriff of Elmore County there have been numerous juvenile cases before the Probate Court and in each instance I have done the best I could to execute all papers delivered to me by the court and have performed my duty toward such juveniles as well as possible, but I do not know through what source and how to receive compensation for my services. I have read Section 3558, Code of 1923, which is plain as far as it goes, but it does not appear to be entirely applicable."

You request my opinion:

"1. I am requesting you to advise me in detail what steps I must take, and procedure to follow in getting my pay for such services, and

with whom to file my claim. There are numerous duties connected with the procedure in juvenile cases not mentioned in circuit court procedure and there are very few 'like services' as mentioned in the section referred to. Juveniles are not handled by the convict department and therefore when one is convicted, the convict department does not pay costs. It appears from the above mentioned section the expenses for feeding juvenile delinquents should be paid from the same source defendants in circuit court are, but the state refused to feed them. If the county pays such feed bill, how much should it pay? Who pays for the other services.

"2. I am also asking you that you advise me what procedure to follow in getting pay for summoning jurors in capital cases. If there is more than one capital case set for the week and the special venire is drawn for the first case set, and for all the other cases set for the week, is the sheriff entitled to compensation for his service in each case. From what source are sheriffs paid for such services.

"3. I notice that Section 4492 Code of 1923 provides that the Court of County Commissioners shall make suitable allowance for the sheriff for actual disbursements in performing his duties in non-support cases. Under this section is a sheriff entitled to a reasonable allowance for the use of his automobile when used in executing processes in such cases? To receive such compensation as he is entitled, should a sheriff file his claim with the Commissioners Court as other claims against the county are filed?"

In answering your first question, I call your attention to a part of Act No. 295, S. B. 429, approved September 18, 1923, (General Acts 1923, p. 298) which is as follows:

"Section 3. COURTS HAVING JURISDICTION OF CHILDREN, WARDS OF THE STATE. The probate courts of the several counties of the State, except in those counties in which special courts having exclusive jurisdiction over children under 16 years of age or over and for the purposes declared in this Act have been or shall hereafter be established by special acts of the Legislature, shall have original and exclusive jurisdiction of all proceedings coming within the provisions and terms of this Act and shall have original and exclusive jurisdiction to hear, determine and adjudicate all questions and cases coming within said provisions and terms and each such court shall in the exercise of the jurisdiction herein conferred by this Act, be known as the Juvenile Court of.....County. * * * "

As the Probate Court of Elmore County, is acting as a Juvenile Court in exercising its authority over children, your first question is governed by Section 3558 of the 1923 Code of Alabama, which is as follows:

"3558. Officer serving process, etc., under juvenile courts; costs and fees of.—All officers serving process from juvenile courts, or feeding prisoners committed by, or held for or under such courts, shall receive the same costs, fees and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to process issued by the circuit courts or courts of like jurisdiction

and for feeding prisoners committed by circuit courts or courts of like jurisdiction."

Such costs and fees as are properly chargeable under the section, supra, are payable by the County out of its General Fund.

I call your attention to a part of Section 3529, Code of 1923, as amended by Acts 1931, p. 356, which is as follows:

"All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expense of maintenance and care of wards of the court that may be incurred by order of the court in carrying out the provisions and intent of this chapter, shall be valid charges and preferred claims against the county and shall be paid by the county treasurer, when itemized and sworn to by the creditor or other person knowing the facts in the case, and approved by the judge."

The costs incurred in feeding juveniles are to be paid by the county, under the section supra.

This office has ruled that when one is committed to the jurisdiction of the Juvenile Court, he is not a "prisoner" within the meaning of Section 4827-4828, as amended, but becomes a ward of the State.—**Biennial Report of Attorney General 1930-1932, p. 571; Opinion of the Attorney General to Hon. J. R. Hardy, Sheriff, Chilton County, June 12, 1935 (In ms.); Opinion of Attorney General on January 10, 1936 to Hon. C. N. Corprew, Sheriff of Tallapoosa County, (In ms.)**

In answering your second question, Section 3741 of the 1923 Code of Alabama, allows a fee of only five dollars "for summoning jury in capital case or at any special court for the trial of criminal to be paid out of the county treasury." The sheriff is allowed only one fee of five dollars which is paid out of the county treasury.—**See Biennial Report of Attorney General, 1918-1920, p. 196; Biennial Report of Attorney General 1930-1932, p. 379.**

In answer to your third inquiry, I am of the opinion that under Section 4492 of the 1923 Code of Alabama, the county commissioners, or board of revenue, may properly allow the sheriff a reasonable amount for the use of his automobile, when used in performing his duties in non-support cases. The sheriff's claim for such allowance should be filed in the same manner as his other claims are filed.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 26, 1936.

Hon. Clarence A. Norton,
Tax Assessor, Barbour County,
Clayton, Alabama.

Taxes—Assessment.

Under facts set out property sold for taxes and purchased by individual should be thereafter assessed to the purchaser.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 18, 1936, stating:

"Please give me an opinion on a subject as follows: In 1933 A owned a piece of property in Barbour County on which the taxes were assessed to him in regular form, also in 1934 which were due Oct. 1, 1934, but he failed to pay them and same were advertised and sold for amount of taxes and expenses due in accordance with the statutes of Alabama for such, and B purchased same at tax sale on the 17th day of September, 1935, paying the 1934 taxes. Now B failed to have or give in this property for 1935 which A had also failed to do. Now I as Assessor find this to be an escape for 1935 and B wants to pay same which he does, but a question is Who should this be assessed to as an escape for 1935, A or B. B did not come into possession until September 1935."

I am not perfectly clear as to the facts stated in your request and I am restating them according to my understanding, and the opinion is based on such understanding.

The property was assessed as of October 1, 1933 to A. Taxes thereon became due in 1934 and the property was sold for such taxes in September, 1935, as assessed to A. As of October 1, 1934, the property was again assessed to A and taxes would have become due thereon October 1, 1935, except that the same had been sold to the State prior to October 1st. At such sale, B bought the property sold under the October 1, 1933 assessment and at the time, or subsequent thereto, paid the amount due under the 1933 assessment and also the amount due under the October 1, 1934 assessment. For the tax assessment year beginning October 1, 1935, no assessment was made. You desire to know to whom the property should be assessed. It appears from your statement that as of October 1, 1935, B was the owner and the property should be assessed as an escape to B.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 26, 1936.

Hon. Roy Johnson,
Tax Assessor, Jefferson County,
Birmingham, Alabama.

Taxation.

1. Where property is sold to the State for taxes, the title passes to the State.
2. The lien of the State for taxes is superior to all other liens, including those of municipalities.
3. Where a municipality forecloses or attempts to foreclose a public improvement assessment, against property which has been sold to the State for taxes, it cannot legally acquire title or possession to such property until it redeems from the tax sale to the State, or otherwise satisfies the prior lien of the State.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 5, 1936, in which you state:

"I have a letter from Mr. C. E. Armstrong, Comptroller for the City of Birmingham, in which he states that the City has taken over a number of pieces of property for street improvement. They have repaired the houses and are collecting rents. They ask that we exempt these properties from taxation. In this connection it would seem to me that the State should have prior lien, as the same pieces were sold for taxes. I would like to know whether or not we should call on the City of Birmingham for payment of back taxes before we mark these properties "Exempt—City Property." It would seem to me, also, that the State should have the right to collect the rents just as much, if not more so, than the City of Birmingham.

"The question also comes to mind as to whether or not property can be marked exempt for subsequent years when it is owned by the State. The Legal Department of the City of Birmingham tells me that the City has prior claim and that their claim dates from the date of the ordinance providing for the improvements under which the City sold the property.

"I fear that under the present system, if we mark these properties exempt as City owned property, that we will lose sight of the fact that the State has a claim for back taxes when, and if, the City might sell this property to an individual."

In reply, I beg to advise that Section 372 of the Revenue Act of 1935 provides for the lien of the State and County for taxes and likewise for municipal corporations and provides further that these liens shall be superior to all

other liens "and shall exist in the order named." This section is practically in the same words as Section 416 of the Acts of 1919, page 282. It appears therefore, that the lien of the State is prior to all other liens and that the lien of the county is prior to all other except the State.

This section applies primarily to ad valorem taxes. But, its language is so sweeping that the lien of the State is, in my judgment, necessarily superior to any lien of a municipality whether for ad valorem taxes or improvement assessments. However, by Section 2199 of the Code, 1923, the superiority of the lien of the State and County for ad valorem taxes is specifically provided for. This section provides:

"At such meeting or any adjourned meeting the council shall proceed by order or resolution to fix the amount of the assessment against each lot or tract of land described and included in said assessment roll, and all such assessments, from the date of such order or resolution, shall be and constitute a lien on the respective lots or parcels of land upon which they are levied, superior to all other liens, except those of the State or County for taxes."

It would appear from your letter that the property in question has, prior to the enforcement by the city of its public improvement lien, been sold to the State for taxes in satisfaction of the State's prior lien.

Section 2202 provides that an individual purchaser of property at a tax sale acquires it subject to the public improvement lien of the municipality, yet if the State itself purchases it, there is no authority for the municipality to enforce its lien against the State and the State in foreclosing is prior lien is entitled, in my judgment, to possession of the property—See opinion to Eugene H. Hawkins, Judge of Probate, Jefferson County, Quarterly Report of the Attorney General October-December, 1935, page 207.

The property being sold to the State, the municipality, in order to protect itself, may redeem from the state or by payment of the proper amount, or have the State's certificate of sale, assigned to it.

Your particular question as to marking the property exempt, is not exactly compatible with the facts. As the property has been sold to the state, the title is in the State and there is no occasion for any assessment. The City is not entitled, in my judgment, to possession until the lien of the State is satisfied. Should such lien be satisfied, then the property should be listed as city property and exempt.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

March 30, 1936.

Hon. W. E. Butler,
Judge of Probate,
Madison County,
Huntsville, Alabama.

Elections—name of candidate, failing to comply with the provisions of Section 588 of the Code of 1923 relative to filing name or names of committee handling his campaign expenditures, or himself as said committee, should not be placed on ballot. (Section 589, Code of 1923).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 20, 1936, in which you request my opinion as follows:

"If a candidate fails to file with the proper authorities within five days after the announcement of his candidacy the name or names of the committee handling his campaign expenditures, or himself as said committee, under the provisions of Section 588, Code of 1923, should the name of said candidate be placed on the ballot if his name appears on the list furnished by the party committee and he later files the necessary declaration of appointment or selection?"

I am of the opinion that your inquiry should be answered in the negative.

Section 588, Code of 1923, provides as follows:

"Section 588. Committee to receive, expend, audit and disburse money or funds contributed. — Any candidate shall, within five days after the announcement of his candidacy for any office, if the office be a state office, file with the secretary of state, and if the office be a county office, file with the judge of probate of said county, and if it be a district or circuit court, file with the judge of probate of each county which is embraced in said district or circuit, the name of not less than one nor more than five persons elected to receive, expend, audit and disburse all moneys contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting the nomination or election of such candidate, together with a written acceptance or consent of such person to act as such committee, but any candidate may, if he sees fit to do so, declare himself as the person chosen for such purpose. Such committees shall appoint one of their number to act as treasurer, who shall receive and disburse all moneys received by said committee; he shall keep detailed account of receipts, payments and liabilities. The said committee or its treasurer shall have the exclusive custody of all moneys contributed, donated, subscribed, or in any wise furnished for or on behalf of the candidate represented by said committee, and shall disburse the same on proper vouchers. If any vacancies be created by death or resignation or any other cause on said committees, said candidate may fill such vacancies, or the remaining members shall discharge and complete the duties required of said committee as if such a vacancy had not been created. No candidate for nomination or election shall expend any money

directly or indirectly in aid of his nomination or election except by contributing to the committee designated by him as aforesaid."

It will be noted from the above that a candidate must, within five days after the announcement of his candidacy, file the necessary declaration of appointment or selection with the Secretary of State or the Judge of Probate, as the case may be.

Section 589, Code of 1923, provides as follows:

"Section 589. Candidate acting as own committee—Any person who shall act as his own committee shall be governed by the provisions of this article relating to committees designated by candidates. Failure to make the declaration of appointment or selection by any candidate as herein required is declared to be a corrupt practice, and in addition the name of such candidate so failing shall not be allowed to go upon the ballot at such election."

This section specifically provides that the name of a candidate who fails to make the declaration of appointment or election as is required, shall not be allowed to go on the ballot. The "declaration of appointment or election as is required," as used in this section, in my opinion, refers to the one provided for in Section 588, supra.

The five day limitation in Section 588, supra, in my opinion, is mandatory and cannot be extended. The fact that the name of a candidate, who has failed to comply with the provisions of Section 588, supra, is included in the list furnished by the party committee, is immaterial.

Sections 588 and 589, supra, are not in any way modified or repealed by the Primary Election Law of 1931, (Acts 1931, pp. 73). On the contrary Section 588 is recognized by said Act wherein said section is referred to in Section 56 of the Primary Election Law, as amended by Acts 1931, page 755.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 2, 1936

Hon. C. E. Sellers,
Tax Collector,
Pike County,
Troy, Alabama.

Poll tax: Under Section 3034 of the 1923 Code of Alabama a tax collector is prohibited from receiving and receipting for poll tax after the first day of February and before the first day of next October, although he has misinformed a taxpayer as to the amount of poll taxes due.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 19, 1936, in which you state:

"On January 31st of this year, Mrs. A who was born in January 1901 and who would have been twenty-one years old in January 1922, came to my office to pay her poll tax.

"She desired to pay for each and every year from the time she was twenty-one to and including 1935. From some reason I miscalculated the time and did not collect for the year 1922. In other words, she paid for the years 1923 to 1935 inclusive.

"In making the polling list this error was detected by the Probate Judge and her name was not placed on it as a qualified voter as was her desire.

"She came to my office very much perplexed over the error, not only lamenting the fact that she could not vote, but that she had paid out that amount of money to no effect and has asked me for some way that is legal in order that she may be a qualified voter as was her wish.

"Not knowing anything that I could do for her, I went to Hon. Wm. L. Parks, Judge of our Circuit Court and stated the case to him. His opinion is: That Mrs. A. was desirous of becoming a qualified voter, by paying a poll tax for each year from the time she became twenty-one years old to and including the year 1935, that it was no fault of hers, but the fault of the tax receiver in making the calculation, and that I can legally receive the money for the year 1922 and receipt her for same which will give the Probate Judge the right and authority to place her name on the polling list."

It is my opinion that you, as Tax Collector, could not legally receive and receipt for the poll tax due for the year 1922, after the first day of February and before the first day of next October.

I call your attention to Section 3034 of the 1923 Code of Alabama, which is as follows:

"3034. Time when receipts may be given. — After the first day of February and before the first day of the next October, the tax collector shall have no authority to receive or receipt for poll taxes due by any person."

The fact that Mrs. A. acted in good faith, or that the tax collector misinformed her, is immaterial. There was no legal duty on the tax collector to give her information on the subject. The duty was upon her to tender to the tax collector the full amount of the poll tax due by her and upon the tax collector when so tendered, to receive it and give her a receipt for each of the years so paid. — Biennial Report of Attorney General 1928-1930, p. 891.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 2, 1936

Mr. J. E. McAdory,
Deputy Tax Assessor,
Bessemer, Alabama.

Taxation — Assessment of stocks of goods etc. Penalty — No penalty is provided for failure to make return for assessment of stocks of goods, wares and merchandise for the **current year**, as is required to be made by subsection (D) of Section 10 of the 1935 General Revenue Act.

It is the duty of the Assessor to assess such property upon discovery thereof.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 24th, in which you state:

"I request an official opinion as to whether or not a delinquent fee and ten per cent penalty are added to an assessment made for three-fourths or one-half year's taxes. If so, at what time are the fee and penalty incurred? For example, an individual went into business in January. He would be taxed for three-fourths year and at the present date has not made an assessment."

In reply I call to your attention Subsection (d) of Section 10, of the General Revenue Act of 1935, which provides:

"(d) All stocks of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, except in cases where business commenced on or after October 1st of a current year, and in such cases the assessment to be on the capital actually employed in the business and apportioned as hereinafter provided, but the amount so assessed for any whole year shall in no case be less than the capital actually employed in the business, and this shall include all goods, wares and merchandise kept on plantations or elsewhere, or by railroad companies or persons, for sale or to be dealt out to laborers or employees for profit, or on account of their wages, and shall include all goods, wares, and merchandise offered for sale by any person commencing business subsequent to the first day of October of a current year, but, in such case the tax shall be apportioned according to the date at which the business was commenced, so that if commenced, after the 1st day of January the tax shall be three fourths ($\frac{3}{4}$) of the tax for the whole year; if commenced after the first day of April the tax shall be one-half ($\frac{1}{2}$) of the tax for the whole year; provided that the assessment herein provided for shall not include products raised on the farms in the hands of the original producers. If the person, association or corporation, receiver or trustee carrying on such business shall fail to make return of the amount of stock of goods, wares and merchandise as provided by law, or if the county tax assessor is not satisfied with the return made, in order to make proper assessment, he shall have the

right to demand a copy of the last inventory made of such stock of goods, wares or merchandise, and may also by inquiry of persons believed to have a knowledge of the subject obtain information as to the probable average amount of such stock and from such information may assess the same upon his best judgment."

This provision is listed under the subject of taxation and does not provide the details of the assessment other than to instruct the Tax Assessor to make demand for the information. Section 25, of the same Act provides a fee of fifty cents for the Tax Assessor for making the demand on the taxpayer to return his list of property.

By Section 41, the Tax Assessor is required to make a demand upon all taxpayers who have failed to make return by the thirty-first of December. This contemplates assessments which should have been made as of October 1st, and apparently does not provide for cases such as you suggest where the property does not come into being for taxable purposes until after January 1st.

Section 44 provides that where the Tax Assessor on demand has failed to receive the list of property he shall assess the same and add a penalty of 10 per cent. This likewise has reference, I think, to the preceding provisions relating primarily to property which is assessable as of October 1st.

It would appear that unless Section 25 is broad enough to provide for a demand in cases of this sort, that the law has made no provision, and certainly I do not find any provision providing a time in which such property should be listed after the party begins business.

Under the rule of strict instruction against the State I am of the opinion that the demand fee and 10 per cent penalty are not chargeable in cases of this sort.

It is however, none the less the duty of the Tax Assessor to list such property for assessment whenever he discovers any.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. E. C. Whelan,
License Inspector, Jefferson County,
Room 418 Court House,
Birmingham, Alabama.

April 3, 1936

Non-resident operating automobile or truck (not for hire) in State of Alabama under Schedule 158.15, Revenue Bill 1935, on October 1, 1935, and leaving State before period of thirty days from date of entering not required to purchase Alabama tag though returning to State thirty days later.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 27, 1936 in which you request my opinion as follows:

"I wish you would give me your opinion on a non-resident operating an automobile or truck (not for hire) in the State of Alabama under Schedule 158.15, 1935 Revenue Act.

"If a non-resident owner of an automobile or truck operates an automobile or truck (not for hire) in this state on October 1, 1935 and leaves the state before a period of thirty days from date of entering the state and returns to this state after the thirty day period first entering this state is up, are they required to purchase an Alabama tag on the day of entering this state the second time? If he fails to purchase the tag the first day he enters the state on his second trip as stated above, is he delinquent?"

In my opinion your inquiry should be answered in the negative.

Schedule 158.15 of the Revenue Bill of 1935 provides in part as follows:

"The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State and not used for hire in this State, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or Federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration number as required thereby."

The purpose of this Section is to grant reciprocal rights to citizens of other states who pass through Alabama or remain here temporarily, where such persons have complied with the laws of the jurisdiction to which they are subject. To require a license of the party mentioned in your inquiry would defeat the purpose of this Schedule.

I call your attention to an opinion rendered by this office to the State Tax Commission on September 28, 1929 (Biennial Report Attorney General 1928-1930, page 639) holding that the exemption granted non-resident owners of motor vehicles is a reciprocal exemption and includes motor vehicles used by visitors sojourning in this State or passing through the State.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 4, 1936

Hon. J. B. Van Valkenburgh, Chairman,
Madison County Board of Commissioners,
Huntsville, Alabama.

County Governing Body may make donations to public schools under Act No. 602, H. B. 751, (General Acts 1931, page 687).

Opinion by the Attorney General.

Dear Sir:

I wish to acknowledge receipt of your letter of March 30th, 1936, which letter is addressed to Senator Shelby Fletcher. My understanding is that you desire the letter to Senator Fletcher considered as a request for an official opinion from you. I also acknowledge receipt of the resolution of your County Governing Body which resolution is as follows:

"At a special called meeting of the Madison County Board of Commissioners, the following resolution was adopted:

"It was moved by Mr. Fleming, and seconded by Mr. Nance, and un-animously adopted, that the Madison County Board of Commissioners will donate to the eight accredited schools in Madison County up to \$500.00 each, provided local communities match said funds; said appropriation subject to the opinion of the Attorney General declaring this action legal under the budget law as an emergency appropriation to be made.

"This is to certify that the above is a true and correct copy of minutes spread upon Minute Book No. 3, page 34, of Madison County, Alabama, this the 30th day of March, 1936."

In my opinion the Madison County Board of Commissioners has ample authority to make the donations mentioned in the resolution enclosed by you.

Your attention is directed to Act No. 602, H. B. 751, approved August 4, 1931 (General Acts 1931, page 687) which is as follows:

"To authorize appropriations for the support of the Public Schools out of the funds in County Treasury, by the governing body of the several Counties.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. The Courts of County Commissioners or Boards of Revenue of the several Counties of Alabama are hereby authorized at any meeting of said Court in any Calendar year to appropriate any funds they may deem proper and expedient out of the general funds of the County Treasury for the support of the Public Schools within said County.

"Section 2. Any appropriations heretofore made by a Court of County Commissioners or Board of Revenue or other like governing body of any funds for the support of the Public Schools of said County are hereby ratified.

"Section 3. All laws and parts of laws in conflict herewith are hereby repealed.

"Section 4. If any Section of this Act shall be held to be invalid by any Court such holding shall not affect any other Section which is not in and of itself, unconstitutional."

"Approved August 4, 1931."

This Act specifically grants authority to a county board of commissioners to make appropriations of the nature mentioned in the resolution, supra.

I further call your attention to the following opinions of this office which support the conclusion reached above:

Opinion of the Attorney General, Dec. 15, 1933, to Hon. Oscar L. Thompson, County Attorney, Dothan Alabama; (Opinion of the Attorney General, Office Edition, Vol. 16, page 220);

Opinion of the Attorney General, Mar. 23, 1933 to Hon. L. H. Reynolds, Judge of Probate, Chilton County, Clanton, Alabama, (Biennial Report of the Attorney General 1932-34, p. 195.)

See also Opinion to Hon. E. J. Garrison, Judge of Probate, Clay County, Ashland, Alabama, Oct. 22, 1931, (Biennial Report of Attorney General 1930-32, p. 507.)

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 6, 1936

Hon. Walter K. McAdory,
Chief Alabama Highway Patrol,
Montgomery, Alabama.

A minor though he be under 16 years of age and is prohibited from procuring a driver's license under the Drivers License Act of 1935, may be prosecuted under Section 10 of said Act if he does drive an automobile without a license.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 18, 1936 in which you request my opinion as follows:

"Kindly render me an opinion on the following question:

"Where juvenile under the age of sixteen years operates a motor vehicle on the highways of this State, would he commit a misdemeanor inasmuch as Section 10 of the Driver's License Act sets out 'any person of whom a driver's license is required who operates a motor vehicle on the public highways in this State without first obtaining such license shall be guilty of a misdemeanor'?"

"The question involved is simply this — a juvenile under this section is not required to obtain a driver's license and if contacted operating motor vehicle, would be charged in violation of this Act?"

I am of the opinion that all persons who drive a motor vehicle upon any public highway of Alabama must have a driver's license.

I call your attention to Section 1 of an Act approved September 2, 1935, General Acts 1935, page 756, which is as follows:

"Section 1. That every person, except those hereinbelow exempted, before operating or driving any motor vehicle upon a public highway in this State, shall procure a driver's license. The first license shall be obtained between October 1, 1935, and November 15, 1935, and shall expire September 30, 1936, and a like license or renewal thereof shall be obtained annually thereafter."

You will note the above Section says "every person except those hereinbelow exempted." This last clause has reference to persons exempted by the Act and, of course, does not mention minors under 16 years of age, therefore, minors are not exempted. It is true that Section 4 of said Act does say that such license shall not be issued to a minor under 16 years of age, but this does not exempt him, but is a prohibition against such persons but if he does drive a motor vehicle without a license, he violates Section 10 of the Act, *supra*.

The fact that the law prohibits him from procuring a license if he is under 16 years of age does not authorize him to drive without license. In other words, the prohibition he is under cannot become an exemption.

I call attention again to the fact that the above quoted statute says "every person not exempted must procure a license before he can legally drive a motor vehicle upon the public highways of the State," and if he does drive without this license, no matter what his age may be, he can be proceeded against under Section 10 of the Act, *supra*.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Fees — Probate Judge.

1. Probate Judge not required to attest satisfaction of mortgages, etc., except as provided by Section 9023 of the Code.
2. Where Probate Judge attests such satisfaction under Section 9023 of the Code, he is entitled to a fee of twenty-five cents.
3. In other cases, where he attests the satisfaction of mortgages, etc., at the request of the parties interested, he is entitled to a fee of twenty-five cents as provided by Section 7285 of the Code.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Under date of November 28, 1935, you wrote me as follows:

"Please advise whether or not the Probate Judge must attest the satisfaction of a mortgage by an attorney-in-fact, and whether or not the 25 cent fee should be collected, if such attest is required.

"I was under the impression that the Legislature had abolished the 25 cent fee entirely, but I have not found such an Act of the Legislature in the pamphlets which have been furnished me."

Under date of December 5th, I answered your inquiry by calling your attention to an opinion appearing in Biennial Report 1928-1930, page 355. Subsequent to that, Mr. Henry R. Howze wrote me presumably at your request, insisting that the opinion was laid in error and calling my attention to the case of Blalock v. Windham, 157 So. p. 486, in which the Supreme Court, in discussing Section 9023 of the Code of 1923, said:

"It is urged however, that the satisfaction in question is no protection to the Guaranty Company because not acknowledged or attested according to the formalities required by Section 9023 of the Code of Alabama, 1923. It is sufficient to say that the requirements there provided apply only to satisfactions in response to the demand made and not the voluntary entry of the satisfaction of the mortgage.—Burns v. Burns, 228 Ala. 61; Sullivan v. Williams, 210 Ala. 363, 98 So. 186."

Section 9023 provides in short that the mortgagee, etc., of a mortgage which has been paid "must on request in writing of the mortgagor," enter satisfaction on the margin of the record and that the same must be witnessed by the Judge of Probate or his clerk, and for making this attestation, the

Probate Judge is entitled to a fee of twenty five cents. This is the section construed in the case cited and quoted from above.

It would appear from the foregoing case that there is no absolute requirement for the Probate Judge to witness the satisfaction of a mortgage except in those cases provided by Section 9023.

Section 9023, in addition to that referred to above states: "or satisfaction may be made by an attorney-in-fact authorized by an instrument executed and acknowledged as is required of conveyances and filed for record.

Section 7285, providing the scale of fees for Probate Judges, says: "for entering satisfaction of a mortgage 25c." This was the section referred to in the former opinion.

It take it, however, that this proviso of Section 7285 must be read along with Section 9023, as construed by the Supreme Court and therefore am of the opinion that the Probate Judge is not required to witness the satisfaction of a mortgage by the mortgagee or by his duly authorized attorney-in-fact, whose power of attorney has been filed for record, unless such satisfaction is entered pursuant to a demand made in writing by the mortgagor, as provided by Section 9023. If such satisfaction is made, pursuant to such demand, and witnessed by the Probate Judge, then he is entitled to a fee of twenty-five cents for attesting satisfaction. However, Section 7285 is unlimited in its scope, and if the Probate Judge, at the request of the parties, attests the satisfaction of a mortgage, he would be entitled to his fee of twenty-five cents.

Under the holding of the Supreme Court, however, there is no requirement of law that the satisfaction of a mortgage be so attested except in cases such as are provided for by Section 9023.

If the opinion appearing in the Biennial Report, 1928-1930, p. 355, is contrary to this, the same is hereby overruled so far as opposed to the holding herein made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. W. W. Hill,
Superintendent, City Schools,
Fort Payne, Alabama.

April 9, 1936

City Board of Education not authorized to pay salary to City Treasurer for handling School Funds.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I am in receipt of your letter of January 20, 1936, requesting my opinion as follows:

"Will you please give me a ruling on the following question: Can the Fort Payne City Board of Education pay the City Treasurer a small salary for the handling of school funds? The Act relating to this matter is, Act No. 160, approved July, 1935."

I am of the opinion that the Fort Payne City Board of Education has no authority to pay a salary to the City Treasurer for handling school funds. The Act approved July 17, 1935 (page 202, Acts of Legislature, 1935), amending the School Code, makes no provision for any salary. I know of no other statute providing salary for his position.

The general rule is:

" * * * if a person accepts a public office for which no salary or compensation is fixed by law, any services rendered by him are gratuitous and no recovery can be had therefor."

43 C. J. 684, Par. 1138.

It is interesting to note that this Department has ruled in an opinion to Hon. R. E. Moore, Superintendent of Education of Cullman County, under date of March 30, 1931, that as the County Treasurer of School Funds receives no salary and as no provision is made for payment of his expenses, that he must bear any expenses incidental to his office himself.

That it is the policy of the Legislature not to pay for services rendered as Treasurer of School Funds is indicated by the fact that no salary is provided for the County Treasurer of School Funds.

I am, therefore, of the opinion that the City Board would not be authorized to pay the City Treasurer for handling school funds.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936

Hon. Roy Sanderson,
Judge of Probate, Marion County,
Hamilton, Alabama.

Contract extending beyond term of office of Commissioner valid if made in good faith.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of March 21, 1936, requesting my opinion as follows:

"I shall appreciate your advising me on the following question:

"Suppose that Mr. A. is a Commissioner from District No. 7 in a county and is not seeking reelection, and his term of office expires within some nine months. Mr. A. desires to purchase a large quantity of equipment for road work in his District, and such equipment is to be used during his term as well as during the term of his successor, but, it is not possible for Mr. A. to pay for this equipment during his term of office. Since it is impossible for the Commissioner to pay the full price of the equipment while he continues in office, could he legally make such purchases and therefore bind his successor in office; for the payment of the balance due on such articles at the beginning of the new term?"

The general rule in reference to purchases properly made by members of a Board of Revenue or other authorized officers where payment or part of the payment will not be made until after the expiration of the term of the person making the purchase has expired, is that if a purchase is made in good faith, it is binding; otherwise not. 15 C. J. 541, Par. 234.

This rule is well expressed in the case of *Jessup v. Hinchman*, 133 N. E. 853 77 Ind. App. 460, as follows:

"As a general rule, contracts extending beyond the term of office of members of a Board of County Commissioners are valid if made in good faith."

In the case of *Board of Revenue of Shelby County vs. Farson, Son & Co.*, 72 So. 613, 197 Ala. 375 (1916), the court held that a resolution of the County Commissioners to build a court house and issue warrants constituted a valid contract binding on the Board of Revenue created to replace the Board of Commissioners.

The answer to your particular question therefore depends upon the facts in the instant case. If Mr. A. made purchase in which he was authorized to make and made same in good faith, I am of the opinion that his successor in office would be bound for the payment of the equipment.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 9, 1936

Hon. O. S. Nichols,
Tax Assessor, Perry County,
Marion, Alabama.

Revenue Bill 1935, Section 47, construed. — Notice to taxpayers unnecessary where Board of Review merely returns assessment on basis of previous year without actually raising same.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 12, 1936, in which you request my opinion as follows:

"Will you please give your opinion at the very earliest convenience on the following:

"(1) If a Tax payer makes his assessment in October 1935 for the 1936 assessment and makes his, the tax payers value of his property say \$4000, for 1936, which was assessed for \$5000, for 1935, making a reduction of \$1000, according to his assessment.

"(2) When the Board of Review meets the second Monday in March to review, revise and adjust all assessments turned over by the Tax Assessor, is it necessary for the Secretary of the Board to notify the above Tax payer in case the Board has raised his 1936 assessment back to the same as the 1935 assessment. If I understand the law, you are required to notify only when the Board has raised the value over the preceding year, and not required to testify in case the Taxpayer made his assessment for less than the preceding year and the Board only raised his value back to the same as the preceding year.

"Please answer at an early date as we will have to begin mailing out such notices if necessary which will cost 21c each to register and have return receipt of same. My understanding is that the secretary must notify only those that have been raised over the preceding year value, and not where the Board has raised his assessment from the reduced value back to same as the previous year."

I call your attention to Section 47 of the Revenue Bill of 1935, which provides in part as follows:

"Section 47. The Assessor shall, from information entered on the tax return list and from all other information known to him, or which he may procure, proceed to ascertain what, in his best judgment, is a fair and reasonable market value of each item of property, returned by or listed to any taxpayer; provided, however, that the assessed value of any real estate or improvements as fixed for taxation for the year next preceding the then current tax year shall be prima facie the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced; and the Assessor shall in separate columns, enter on such list such amount and value, and deduction for exemption to which such taxpayer is entitled; and the Tax Assessor shall also add to such list any item of property subject to taxation, owned by such taxpayer, or in which he has any interest whatever and which he has failed or omitted to place on such list; and the taxpayer shall be given notice by the Assessor, by registered mail, return receipt demanded, or in person, of the items of property added to his assessment list after such list has been filed and before the Tax Assessor has completed his assessment; and the Assessor

shall upon demand, furnish the taxpayer with a certified copy of the assessment list so amended. In the event the value of real or personal property of any taxpayer is increased by the Board of Review, herein created, over the assessed value thereof, for the next preceding year, the taxpayer shall be furnished by registered mail, return receipt demanded, or in person, by the Secretary of the Board of Review, with a statement showing separately the value of his personal property, and his real property, and improvements thereon, such statement to be signed by the Chairman of the Board of Review, and also that such taxpayer may file in writing, with the Secretary of the Board of Review, on or before the last Monday in April, objections to any assessed valuation fixed as herein provided. But failure to give or receive the notices required in this Section shall not invalidate such assessment."

This Section is clear in its mandate that where the Tax Assessor has added to the tax return list any item which the taxpayer has failed or omitted to place on such list, or where the value of the taxpayer's real or personal property is increased by the Board of Review, the taxpayer is entitled to be given notice by the Tax Assessor. These are the only two instances in which there is provision for notice. In accordance with the maxim "*expressio unius est exclusio alterius*" where a provision prescribes certain conditions, compliance with which are necessary, no other conditions need be fulfilled; so there need be notice given only in those instances specifically mentioned in Section 47, *supra*.

Accordingly, the Board of Review need not serve the taxpayer with notice of the fact that the Board has raised his 1936 assessment back to the same level as the 1935 assessment. However, the general notice provided by Section 74, should be published.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936

Hon. R. E. Adams,
Judge of Probate,
Escambia County,
Brewton, Alabama.

Taxi license obtained under Schedule 158.3 subsection (c) of 1935 Revenue Act, restricts operation of vehicle to city or incorporated town or within the police jurisdiction of licensee.

Operator of taxi, who serves the public at large, and operates between no fixed termini, both within and without police jurisdiction of city, is required to qualify as a common carrier under Act No. 159, H. B. 113, approved October 28, 1932, (General Acts 1932, p. 178) known as the Tidwell Law.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 18, 1936, in which you state:

"Please let me have your official opinion on the following questions:

"1. Are the operations of the owner of a taxi or motor car, using an X-1 license tag purchased under Schedule 158.3, subsection (c), confined to the police jurisdiction of the city or town of his address?

"2. Is such operator required to qualify under the Tidwell Bill, page 178 of the Acts of the Legislature of 1932, as a 'Contract Carrier,' when his vehicle may be hired by the public at large and he operates between no fixed termini, and both within and without the police jurisdiction of municipalities?"

It is my opinion that your first question should be answered in the affirmative.

The license levied under Schedule 158.3 of the 1935 Revenue Act for each motor vehicle operated as part of a taxicab, or similar system is for the operation of said vehicle in a city, town, or municipality, which also includes the police jurisdiction of said city, town or municipality. Subsection (e) of Schedule 158.3, provides in part as follows:

" * * * Provided, that no city, town or municipality shall levy or collect a license tax on any vehicle hereinabove set out of more than one-half ($\frac{1}{2}$) of the amount levied or collected as set out."

I call your attention to the fact that motor vehicles for hire, while operating within the limits of a city or incorporated town, or within the police jurisdiction thereof, are expressly exempted from the operation of Act No. 159, H. B. 113, approved October 28, 1932, (General Acts 1932, p. 178), by a part of Section 2 of said Act which is as follows:

" * * * 2. Motor vehicles for hire, while operating within the limits of a city or incorporated town, or within the police jurisdiction thereof, or between two cities or incorporated towns whose city limits adjoin or within the police jurisdiction thereof."

Answering your second question, it is my opinion that such operator is required to qualify as a common carrier under Act No. 159, H. B. 113, approved October 28, 1932, (General Acts 1932, p. 178).

The facts as stated in your second question are similar to the facts in the case of *Hood v. State*, 162 So. 543, 230 Ala. 343, in which case the Supreme Court of Alabama held that the operator of the vehicle was not a contract carrier, but was a common carrier as defined by the Tidwell Law.

The Act defines a common carrier as:

"Any operator of a motor vehicle who engages in the motor transportation business for hire as a public employment, provided, however, neither the term 'common carrier', nor any other provision of this Act, shall be construed to mean or include any motor transportation company or common carrier subject to the provisions of the Alabama Motor Carrier Act of 1931."

For your information, I wish to call your attention to the following opinions of this office:

Quarterly Report of the Attorney General, Vol. 1, pp. 111 and 296;
Biennial Report of the Attorney General, 1932-1934, pp. 590 and 75.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936

Hon. Sidney J. Gray,
Mobile County Board of Registrars,
Mobile, Alabama.

Registration — Person of foreign birth who has taken out first papers not entitled to register.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of January 20, 1936, in which you request my opinion as follows:

"We have an application for registration from a person of foreign birth who has taken out his first naturalization papers but has not obtained his final papers. Please let us have your opinion as to whether or not he is entitled to registration."

I am of the opinion that a foreigner who has merely declared his intention to become a citizen is not entitled to register. This was decided in the case of *Gardina v. Board of Registrars*, 160 Ala. 155, 48 So. 788.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936

Hon. H. W. Nixon,
State Toxicologist,
Auburn, Alabama.

State Toxicologist has no authority to exhume a body except when ordered to do so by the Governor, the Attorney General, any Circuit Judge or Circuit Solicitor, or the Commissioner of Agriculture.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of recent date, in which you inquire:

"Have I the authority, by virtue of the law creating the State Toxicologist, to exhume a body if, in my opinion, that is necessary to secure medico-legal evidence for the State of Alabama."

I have carefully read and examined Act No. 225, House Bill No. 425, approved July 17, 1935, the Act creating the office of State Toxicologist, and it is my opinion that the State Toxicologist does not have authority to exhume a body, except when he is ordered to do so by the Governor, the Attorney General, any Circuit Judge, or Circuit Solicitor, or the Commissioner of Agriculture.

In my opinion, under the Act, *supra*, the order to make a toxicologist examination or chemical analysis of any dead human body or any dead domestic animal body carries with it by implication the right to exhume the body as it would be impossible to make a proper examination or chemical analysis without exhumation. I am of the opinion that the Commissioner of Agriculture is only authorized to order the examination or analysis of the body of a dead domestic animal.

I call your attention to the following authorities, which hold that the exhumation of dead bodies for the purpose of supplying evidence is a matter largely within the discretion of the Court. — 30 *Corpus Juris*, p. 320; *Moss v. State*, 152 Ala. 30, 44 So. 598.

For your information, I enclose a copy of an opinion of this office to Hon. John E. McEachin, Solicitor 23rd Judicial Circuit, Huntsville, Alabama, dated September 14, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936

Hon. E. C. Whelan,
License Inspector,
Jefferson County,
Birmingham, Alabama.

Contractors accepting contracts without having first obtained license prescribed by Schedule 42 General Acts 1935, p. 455 held liable for fifteen per cent (15%) penalty and six per cent (6%) interest imposed by Section 353 General Acts 1935, p. 559.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 28, 1936 in which you request my opinion as follows:

"I wish your opinion with reference to Schedule 42, page 455, 1935 General Acts of Alabama. Would a contractor be liable for the 15 per cent penalty and 6 per cent interest, if he accepts a contract to engage in such work as described in Schedule 42 before he obtains a license as required in said Schedule?

"I am asking your opinion at the request of Harbert-Carlisle Construction Company, who purchased a license and paid the 15 per cent penalty and 6 per cent interest to Eugene B. Henry, Commissioner of Licenses. Since paying the penalty and interest they request me to refund the 15 per cent penalty which was paid to me by Eugene B. Henry, Commissioner of Licenses, for the reason that they did not get a work order to begin the work until the day they purchased their additional license. If in your opinion they were not liable for the penalty and interest, can I refund the amount of the penalty paid me by Eugene B. Henry under your present ruling as to the fees of this office, or should they make application for refund under Section 366 and 367?

"I might state the facts in this case are that the contracts were let and accepted prior to the purchasing of the additional license, but they contend that there was a provision in the contract that they could not actually begin work on the job until they got a final work order."

In my opinion, the contractor mentioned in your inquiry would be liable for the fifteen per cent penalty and six per cent interest where he accepts the contract to engage in the work mentioned in Schedule 42, General Acts 1935, p. 455 before obtaining the license required by said schedule.

I quote from an opinion of the Attorney General to Hon. W. M. Vaughan, Judge of Probate, Dallas County, Selma, Alabama (Biennial Report of the Attorney General 1922-24, p. 177) wherein it was said in construing an identical section of the 1919 Revenue Act:

"Schedule 34 of Section 361 of the Revenue Act, 1919, is, in my opinion, predicated upon the acceptance of a contract or contracts and not upon the performance of the work contracted to be done. * * * Under

Schedule 34 a license is required on acceptance only of the contract or contracts. The license, in our opinion, is on contracting and not on the performing of the work contracted to be done.

"The schedule begins with a definition of the word 'contract', which definition is as follows:

'Any person, firm or corporation accepting orders or contracts for doing any work * * * shall be deemed a contractor.'

"It seems clear, then, that it is the **accepting** of orders or contracts to do a kind of work mentioned in the schedule, and not the performance of the work contracted to be done, which determines the question as to who is a 'contractor' within the meaning of Schedule 34.

"After defining what constitutes a 'contractor' within the meaning of the schedule, said schedule then proceeds to levy the tax in the manner following:

"'Every such contractor shall pay a license to be ascertained in the following manner: If the gross amount of orders or contracts accepted aggregate five thousand dollars and not exceeding ten thousand dollars, he shall pay the sum of ten dollars;' If * * * ; and when such contractor shall have obtained a license for any year for which he has paid a license tax less than the maximum above prescribed, he shall not accept any contract or contracts during such year, the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid to him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license.'

"A careful reading of the foregoing provisions of said Schedule 34 will, we think, reveal the fact that its was the legislative intent to levy the tax upon **accepting** certain kinds of contracts, and not upon the performance of the work to be done."

The above statements are equally applicable to the present law, i. e., Schedule 42, which is a facsimile of the schedule under discussion in the opinion above quoted. It appearing from the facts detailed by you that the contract was in fact accepted before the license was taken out, the contractor mentioned in your inquiry is liable for the penalty imposed by Section 353 (General Acts 1935, p. 559) upon such delinquents.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 11, 1936

Hon. S. P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Counties — Temporary loans made under the provisions of Section 11 of Act No. 379, H. 191, approved September 9, 1935, (Acts 1935, page 803) known as the "County Financial Control Act" shall not exceed ninety-five per cent of such temporary loans made during preceding fiscal year except for emergencies as provided for in Section 17 of said Act.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 3, 1936, which is as follows:

"Please refer to Section 11 of the Financial Control Act and advise me as follows:

"This County borrowed \$20,000.00 last year from the bank to meet current expenses and has been doing so for years. Same was paid in January. We are trying our best to get by this year without borrowing. If we can will we be prohibited from making a temporary loan next year to meet current expenses under the provisions of this section, since said section provides that loans of this kind can be made but should not exceed ninety-five per cent of such temporary loans made during the preceding fiscal year?"

Section 11 of Act No. 379, H. 191, approved September 9, 1935, (General Acts 1935, p. 803) known as the "County Financial Control Act", provides as follows:

"Section 11. TEMPORARY LOANS. Nothing in this Act shall be construed to repeal the general laws of the State of Alabama authorizing counties to make temporary loans in anticipation of collection of taxes; provided, however, that hereafter no temporary loan or loans in anticipation of the collection of taxes made for the purpose of enabling counties to meet their current obligations shall exceed 95% of the amount of such temporary loans made during the preceding fiscal year, except that to meet emergencies provided for in Section 17 hereof, temporary loans in anticipation of collection of taxes may be made up to the full amount provided for under the general laws of the State of Alabama; and in making up the budget provided for under this Act the amount borrowed on temporary loans in anticipation of the collection of taxes to be made during each fiscal year shall be included as a part of the operating revenue of the county for such year; and the amount of such temporary loan, principal and interest, payable in each fiscal year, shall constitute a part of the current operating expenses to be included in the

budget for the county for the fiscal year in which such loans are payable, and shall be paid out of the funds pledged therefor." (*Italics supplied*).

It will be seen from the above that temporary loans made by a county under Section 11 shall not exceed ninety-five per cent of the amount of such loans made during the preceding fiscal year except for emergencies under Section 17 of the County Financial Control Act. In my opinion the provisions of Section 11 are mandatory and must be followed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 16, 1936

Hon. T. A. Simpson,
County Commissioner,
Fayette County,
Berry, Alabama.

Counties — authorized to expend an amount not to exceed one-third of its share of the gasoline tax in the payment of past incurred indebtedness created by it in the construction and for maintenance of its roads and bridges (Act No. 51, H. 61, approved March 26, 1936.)

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 2, 1936, which is as follows:

"Can any part of the gasoline tax of Fayette County be applied on payment of past indebtedness for road work which was contracted for and done in the year 1916 and the two or three years following?"

The answer to your inquiry is now governed by Act No. 51, H. 61, approved March 26, 1936, which is as follows:

"Section 1. The Board of Revenue or Court of County Commissioners or other governing body of each and every county in Alabama is hereby authorized and empowered to expend an amount not to exceed one-third of the total amount that may be received by each county from the levy and collection of any tax on gasoline in the payment of any debt that may have been heretofore incurred by such county for the construction and/or maintenance of roads and bridges.

"Section 2. All expenditures heretofore made for the purposes and from the funds named in Section 1 of this Act are hereby ratified.

"Section 3. This act shall become effective upon its passage and approval."

It will be seen from the above that a county now is authorized to expend an amount not to exceed one-third of its share of the gasoline tax in the payment of past incurred indebtedness created by said county for the construction and for maintenance of its roads and bridges.

An opinion of this office rendered to Chas. W. Lee, State Comptroller on February 7, 1936, held that Acts 1932, p. 225, was repealed by the adoption of the 1935 Revenue Act. This opinion is correct, but its effect is changed by the adoption of the 1936 Act above set out. The 1936 Act had the effect of reenacting the 1932 Act which was repealed by the Revenue Act of 1935. The 1936 Act is now in full force and effect.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 16, 1936.

Hon. Matt A. Boykin,
Probate Judge, Mobile County,
Mobile, Alabama.

License and Taxation — A conditional sale contract assigned before recordation to a National Bank is not exempted from registration tax levied by Schedule 94 of Section 348 of the Revenue Act of 1935, when offered for record by the assignee bank.

An assignment of an unrecorded mortgage, when such assignment is offered for record by a National Bank, is not subject to the registration tax levied by the Revenue Act of 1935.

When an instrument offered for record shows on its face facts which raise in the mind of the Probate Judge to whom offered for record the question of whether or not the instrument recites the true consideration of the transaction, such Probate Judge may make inquiry to ascertain the real consideration for the purpose of ascertaining and collecting the registration tax provided by law.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Enclosed please find photostatic copy of conditional sale from Quigley's Specialty Co. Inc. to Mrs. Cora P. Breland, and the conditional sale transferred by the Quigley's Specialty Co. Inc. to the Merchants National Bank of Mobile. Kindly advise if this instrument is taxable. In this conditional sale there is no cash consideration recited, therefore the \$233.28 is in deferred payments. We have collected a tax of 45c but the

Bank is objecting to this tax and as we will have quite a number of these instruments would like to get your opinion as quickly as possible.

"The transfer is attached to the conditional sale and offered for record together."

It appears from the photostatic copy attached to your request that Quigley Specialty Company, a corporation, has sold to a buyer a certain household appliance, and to secure the unpaid balance of the purchase price, has retained title thereto by a conditional sale contract executed to it by the buyer; that this contract, before being recorded, was assigned by the Quigley Company to a National Bank in Mobile and that thereafter the National Bank offered for record the original conditional sale contract and the assignment thereof and protests paying the tax levied thereon by Schedule 94 of Section 348 of the Revenue Act of 1935 presumably on the ground that mortgages, contracts, etc. owned by National Banks (which are agencies of the United States), are exempted from payment of the tax.

Your inquiry involves three questions, namely:

1. Is an assignment to a National Bank of a mortgage or other contract for the security of a debt subject to the registration tax when said assignment is offered for record?
2. Is a mortgage or other contract of the kind and type contemplated by the statute, which is subject to registration tax when made in view of the fact that no party to the instrument is an agency of the United States, exempted from liability to said tax in the event that, before recordation, it is assigned to a National Bank, and then offered for record by said Bank as assignee?
3. When an instrument offered for record on its face raises in the mind of the Probate Judge to whom the same is offered for record, the question as to whether or not the instrument recites the real and true transaction or whether there was in fact other consideration therefor, is said Probate Judge authorized to make inquiry to ascertain the true consideration of the instrument to the end that the proper registration tax may be levied and collected?

The first question has been answered by opinion of this office addressed to Hon. Eugene H. Hawkins, Probate Judge of Jefferson County (Biennial Report of Attorney General 1932-34, page 460), which holds that the tax should not be charged upon an assignment offered for record by an agency of the United States, by which assignment an unrecorded mortgage of private parties is conveyed and assigned to said governmental agency.

The second question presents more difficulty.

Inasmuch as National Banks are agencies of the United States (First National Bank v. Anderson, 46 Sup. Ct. 135, 269 U. S. 341, 70 L. ed. 295), the power of a State to tax them, directly or indirectly, involves a Federal question upon which the decision of the Supreme Court of the United

States is controlling and obligatory upon the State Courts. *National Bank v. Fairweather*, 263 U. S. 103, 44 Sup. Ct. 23, 68 L. ed. 191.

When the question of the power of the State of Alabama to charge the registration tax here involved upon mortgages, etc. made payable to agencies of the United States was before the Supreme Court of Alabama (*Crosland v. Federal Land Bank*, 207 Ala. 456), it was there decided that "if it (The Federal Agency) does not desire to record its mortgage, the same is not liable to a tax; but if it wishes the benefit and protection of our registration laws, it must, like all others, pay for the privilege."

However, on appeal to the Supreme Court of the United States (*Federal Land Bank v. Crosland*, 67 L. ed. 705) the Court there said:

"It has levied a tax on mortgages, using the condition attached to registration as a practical mode of collecting it. In doing so, by the construction given to the statute by the Supreme Court (of the State) it has included mortgages that it is not at liberty to reach."

At the time of the execution of the conditional sale contract here under consideration, no Federal Agency being interested or involved, it was not, within the classification laid down by the Supreme Court of the United States, "such an instrument as the registration tax was not at liberty to reach." The National Bank which obtained it as assignee took it with full knowledge that the mortgage tax levied thereon was due and would have to be paid if and when the same was offered for record (*Federal Land Bank v. Crossland*, 67 L. ed. 705). Under such circumstances, the collection of the registration tax is not in fact taxing an instrumentality of an agency of the United States, but is taxing an instrumentality of such agency's assignor. I can see no logical distinction between requiring a National Bank to pay the registration tax due upon an instrument at the time the Bank acquires title thereto, when offered for record, and requiring such Bank to pay ad valorem taxes on personal property when such taxes are due and unpaid at the time the Bank acquired title to the said personal property.

I am, therefore, of the opinion that the conditional sales contract assigned to Merchants National Bank of Mobile should not be received for record except upon the payment of the registration tax required by law. Of course, the National Bank might have required its assignor, the Quigley Company, to pay the tax to it or to the proper authority before it accepted an assignment of the same. If it failed to require such payment it stands convicted of taking title to property on which unpaid taxes are due; and the exemption afforded ought not to apply to past due taxes legally levied.

I reiterate that this construction is based on the decision of the United States Supreme Court in the *Crosland Case*, supra, "that the tax is levied on mortgages and that the condition attached to registration is merely a practical method of collecting it." This view is binding and obligatory on the State Courts in construing the taxing statute only in so far as the question of the application of the said statute to instrumentalities of Federal Agencies is concerned. On all other applications of the statute, the Supreme Court of Alabama has the unquestioned right to place on the statute such construction as to it seems just and proper.

The third question heretofore has been answered by an opinion of this office addressed to Hon. L. G. Garrison, Probate Judge of Walker County, dated September 16, 1935, a copy of which is transmitted herewith.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 17, 1936

Hon. Ernest L. McClure,
Clerk Circuit Court,
Lauderdale County,
Florence, Alabama.

Bastardy — Bond required in bastardy case by Section 3427 Code of 1923, held not to secure costs on appeal.

1. Security for costs, in absence of proper affidavit, must be offered on appeal in bastardy case, but bond held unnecessary under Section 3439 of the Code of 1923.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of March 21, 1936, requesting my opinion as follows:

"I am enclosing a copy of an appeal bond executed in a **Bastardy Case** and I want an opinion on the liability of the sureties as to the complete costs in this case.

"1. Would the sureties on this bond be liable for the costs of the appeal if the decision of the lower court was affirmed by the Supreme or Appellate Court?

"2. Would the sureties be liable for the costs of witnesses, trial tax and Sheriff's and Clerk's fees if the decision of the lower court was affirmed?

"3. When an appeal is taken in a Bastardy Case should there be **two bonds** executed before the Defendant can be released? Should there be an appeal bond and also a bond for the payment of the judgment and court costs?

"Please let me have this opinion as soon as you can, as I have several cases like this and there seems to be a difference of opinion among the attorneys as to what is proper."

You also enclose a copy of an appeal bond in the sum of seven hundred dollars (\$700.00), which contains the following conditions for payment:

"The condition of the above obligation is such that: **WHEREAS** _____, Defendant; was convicted in the Law & Equity Court of Lauderdale County, Alabama, on the 7th day of Oct. 1935 of the offense of Bastardy and was on the 8th day of October, 1935, sentenced to a period of twelve months hard labor for Lauderdale County, Alabama and

WHEREAS, the said _____ defendant has prayed for and obtained an appeal from said judgment,

NOW THEREFORE, if the said _____ defendant, shall prosecute the said appeal to effect, or failing therein, shall appear and serve the sentence of the Court, then this obligation shall be void, otherwise remain in full force and effect.

And as against this obligation, we and each of us, hereby waive all our rights of exemption as to personal property under the Constitution and Laws of the State of Alabama."

In reply, I wish to advise you that in my opinion your first two inquiries must be answered in the negative. The bond offered in this case and inclosed with your request does not purport to offer security for costs arising either in the lower court or on the appeal. In my judgment, the bond, supra, is nothing more than an appearance bond and it is conditioned upon the appearance of the defendant to serve sentence in the event the judgment of the lower court is affirmed.

In reply to your third question, I refer you to Sections 3427 and 3439 of the Code of 1923. Section 3427 provides as follows:

"On the trial of such issue, if found against the defendant, judgment must be rendered against him for the costs, and he must also be required to enter into bond with surety, to be approved by the judge, in the sum of one thousand dollars, payable to the state, and conditioned to pay the costs of the proceeding, and such sum, not exceeding one hundred dollars a year, as the court may prescribe, on the first Monday in January, in each year, for ten years, to the judge of probate of the county, for the support and education of the child, which bond must be recorded."

You will note that the bond contemplated by this Section is mandatory, if the defendant is to be released after conviction, when he prosecutes no appeal from the judgment. Section 3439 Code of 1923 provides as follows:

"Either party may appeal to the supreme court or court of appeals within thirty days after judgment. If the appeal is taken by the state, the complainant must give security for the costs of the appeal, if the judgment is affirmed; and the defendant, also, if the appeal is taken by him, must give the same security, to be approved by the Clerk of the circuit court, the names of the sureties certified with the record to the appellate court, and execution may issue for the costs of the appeal against them from such court, if the judgment of the circuit court is

affirmed. But when either the complainant or defendant makes affidavit that she or he is unable, after diligent effort, to make the appeal bond, they may appeal **without any bond.**"

The provisions of this Section do not make a cost bond mandatory, if the proper affidavit is made concerning inability to make such a bond, but in the absence of the said affidavit, security for costs must be offered in writing to support an appeal under this statute. See *Satterwhite v. State*, 28 Ala. 65, with authorities cited.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 21, 1936

Hon. D. B. Borden,
Judge of Probate,
Hale County,
Greensboro, Alabama.

Tax Sales — When land is sold for taxes and bought in by another than the State, and the purchaser quitclaims to original owner, the quitclaim deed conveys the property to the original owner as if the owner had redeemed the property under Section 3111 of the 1923 Code of Alabama, with the exception of the taxes which have accrued since the tax sale.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 11, 1936, in which you state:

"Mr. H. A. Taylor of Greensboro bought a piece of property at a tax sale, on which the exemption rights will expire in December of this year. The party who lost the property at the tax sale has gotten a quitclaim deed from Mr. Taylor, instead of redeeming from the Probate Judge, and without paying the current tax and also making a deposit for the 1936 tax, with the tax collector.

"Please advise if this will convey the property to the original owner, the same as if he had redeemed through the regular channels, as provided in the Tax Code."

In my opinion your question should be answered in the affirmative, with the exception that the original owner by getting a quitclaim deed from the purchaser, takes the property subject to the taxes that have accrued since the tax sale. If the original owner had redeemed the property as provided

by Section 3111 of the 1923 Code of Alabama, these taxes would have been paid, or the amount of the taxes not yet due would have been deposited with the tax collector.

In answering your request, I am assuming that the tax certificate has been assigned to the original owner, or that the quitclaim deed was recorded by the original owner before any assignment of the tax certificate.

The original owner by obtaining a quitclaim deed from the purchaser at the tax sale, has acquired all rights or interests in the property lost by the tax sale.

"Title to real property may be as effectually conveyed or transferred by a quitclaim deed, as by any other form of conveyance. It conveys only whatever title or estate the grantor may have had in the land at the time it is given."

Moelle v. Sherwood, 148 U. S. 21, 13 S. Ct. 426, 37 L. Ed. 350;

Van Rensselaer v. Kerney, 11 How. 297, 13 L. Ed. 703.

See also 18 C. J. 313.

The property should have been assessed to the purchaser at the tax sale, and, of course, the purchaser is liable for the taxes that have accrued since the sale, and if the taxes are not paid when due the property should be re-sold for the payment of the delinquent taxes.

Biennial Report of Attorney General, 1932-1934, p. 125.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. G. B. Smith,
Tax Assessor,
Elmore County,
Wetumpka, Alabama.

April 21, 1936

Tax Assessors. Book of Assessments —

(1) Tax Assessors, except where required by local laws, not required to make book of assessments.

(2) Opinion to H. S. Long, Pres. State Tax Commission, dated March 26, 1936, withdrawn.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I am in receipt of your ruling of March 28, 1936 to the State Tax Commission, in which you ruled that the Book of Assessments as provided for in Section 55, H. B. 324, approved July 10, 1935, must be prepared by the Tax Assessors of the several counties.

"In view of the fact that the Acts of 1932, Act No. 83, approved October 11, 1932 (General Acts 1932, page 93) relieved the assessors from making such books, and also taking into consideration the expense counties would incur by reason of expensive books, which I estimate in my county to be not less than \$450.00, it appears to me that the making of such books would not only be of no value as a record in the Assessors' offices, but would also place an additional unnecessary expense on the several counties.

"Please further investigate this matter, and if at all possible, I trust that the former opinion can be reconsidered, and I respectfully so request."

Since receiving your letter I have carefully reviewed the opinion to which you refer and while the meaning of the Statute is not clear, I am persuaded that the conclusion arrived at in the former opinion is not correct.

I will review briefly the recent history of Section 55 of the Revenue Act of 1935.

As Section 42 of the 1923 Revenue Act (1929 Comp. Section 167) it required the book of assessments to be made in all counties, except those in which the assessment was in excess of \$100,000,000.00 (Jefferson County), in which the binding together in permanent form of the original assessment lists was provided.

Immediately the legislature by a series of local acts embarked upon the policy of making the Jefferson County method applicable in other counties.

In 1923, by local statutes, the tax assessors of three counties were relieved of making the book of assessments, and authorized to bind as a permanent record the original assessment sheets. In 1927, the Tax Assessors of seven other counties were likewise relieved, and in 1931, eleven counties, others were added to the list.

Probably realizing the hodge podge that has been created the Legislature in 1932 by General Act (Acts 1932, p. 93) relieved the assessors of all counties of this duty, except where provided **otherwise by local law.**

At the time of the adoption of this statute I have not found a local law requiring such book to be made, to have been in existence.

However, by Local Acts of 1933, p. 7, the Tax Assessor of Limestone County is required to make such book.

Thus in 1935 the state of the law, as found by my research was that tax assessors were relieved of making the book of assessments in all counties except one.

With that predicate, we may take up Section 55 of the 1935 Act.

After stating the book of assessments shall be made it adds this proviso:

"Provided that in counties where assessors are now allowed by law to use assessment lists in lieu of a book of assessments, the assessor shall not be required to prepare a book of assessment, as provided for in this Section, but in lieu thereof shall be required to arrange in alphabetical order original assessment lists, and cause the same to be permanently bound, and such assessment lists when bound, shall constitute the book of assessments as herein provided, and the certificate of the State Tax Commission, or the agent or assistant thereof provided for in the next section, shall be entered upon each of said bound volumes of assessments. Such assessment lists when bound shall be preserved permanently as a matter of record. In making the tax collectors' abstracts, such abstracts shall be made direct from the assessment lists."

In writing the opinion to H. S. Long, Chairman of the State Tax Commission, I had not discovered the Limestone Act and it seemed to me that the only field of operation for this proviso was to apply it to local acts relieving assessors of the duty.

There is afforded though by the Limestone Act a field of operation which harmonizes with the general policy of the legislature as evidenced by so many acts, different from that given in the former opinion.

I am therefore of the opinion that the phrase "in counties where assessors are now allowed by law to use assessment lists" etc. covers all counties, except those where there is a specific requirement therefor as in Limestone County. In other words, the 1932 Act relieving assessors in all counties of such duty, except where local laws provide otherwise, was the law at the time of the adoption of the 1935 Act and Section 55 does not change its effect.

I therefore conclude that assessors are not required to make the book of assessments, in any counties except where required to do so by local law, but in lieu may arrange in alphabetical order and permanently bind the original assessment sheets in the manner authorized.

I am further persuaded that this construction effects more closely the legislative intent for the reason that no extra compensation is allowed the assessors for performing this duty as is allowed for the duties required by Sections 58 and 59, and as you suggest the expense to the counties will be heavy.

The opinion to H. S. Long, President, State Tax Commission, dated March 28, 1936, is accordingly overruled and withdrawn.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

April 22, 1936.

Hon. S. D. Bayer,
Superintendent of Education,
Greene County,
Eutaw, Alabama.

Schools—The calling of elections for levying one-mill and three mill taxes is governed by Sections 253 and 261 of the School Code of 1927 respectively. Special district three mill tax election is called upon request of County Board of Education.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 7, 1963, in which you present the following inquiries:

(1). Whether or not Section 253 of Article XII of the School Code of 1927 governs calling an election for levying an additional one mill special county school tax.

(2). Whether or not Section 261 of Article XIII of the School Code of 1927 governs calling an election for levying special three mill district tax in each of the two school districts in this county; or, what law governs these elections.

(3). In calling an election for levying a special three mill district tax, does the Court of County Commissioners act upon a request from the County Board of Education or upon a petition signed by two hundred or more qualified electors residing in each district. If the latter be true, what is the procedure when less than two hundred qualified electors reside within one of the districts?"

I am of the opinion that your first two inquiries should be answered in the affirmative.

Sections 253 and 261 of the School Code of 1927, providing for the calling of one mill and three mill school taxes respectively, as far as I have been able to ascertain, are still in full force and effect. However, in this connection I wish to call your attention to Act No. 94, S. 65, approved April 6,

1936. Said Act deals in part with school tax elections, but does not affect Sections 253 and 261 of the School Code of 1927, supra.

In answer to your third inquiry, it is my opinion that in the case of special three mill district taxes, the Court of County Commissioners or other governing body acts upon the request of the County Board of Education in respect to calling the election.

Section 261 of the School Code of 1927, provides as follows:

"261. Calling Election For Levy Three Mill Tax.—Upon a petition signed by two hundred or more qualified electors of any County to the Court of County Commissioners or other governing body, said Court of County Commissioners or other governing body shall order an election to be held at the time specified in said petition to determine whether or not a special tax shall be levied for public school purposes within said County, and upon request of the County Board of Education to the Court of County Commissioners or other governing body, said Court shall order an election to be held at the time requested by the said Board of Education to determine whether or not a special tax shall be levied for public school purposes within any school district in the County under the control of such Board; and upon the request of any City Board of Education to the Court of County Commissioners or other governing body said Court shall order an election to be held at the time requested by said Board of Education to determine whether or not a special tax shall be levied for public school purposes within said City."

The above section provides for the calling of elections for the levying of three kinds of three mill taxes, viz: county wide, districts under the control of the County Board of Education and cities. In the case of county wide three mill tax elections, a petition signed by two hundred and fifty qualified electors of the county is necessary before the Court of County Commissioners or other governing body can call the elections. In the other two cases the request of the County Board of Education or the City Board of Education, as the case may be, is sufficient. When such requests are made the elections are called by the Court of County Commissioners or other governing body in compliance with the requests.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936

Hon. Matt A. Boykin,
Judge of Probate, Mobile County,
Mobile, Alabama.

Elections — Acts 1926-27, page 276 held not to authorize the Judge of Probate to reinstate a name on the qualified list of voters when said name has been stricken from the said list by the Board of Registrars.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 16, 1936, in which you request my opinion as follows:

"On the 9th of April, G. B. Dunning, as Attorney for W. T. Snyder filed a petition in this office relative to reinstating Mr. Snyder after his name being stricken from the list of qualified electors by the Board of Registrars on May 28, 1935.

"On presenting this petition we took the matter up with Mr. Dunning referring him to an attorney general ruling of April 25th, 1932, by Thomas E. Knight, Jr., Attorney General, to Hon. A. H. Glasgow, Judge of Probate, Heflin, Alabama, which states the Judge of Probate is without power to reinstate a name on the qualified list which has been stricken from said list by the Board of Registrars.

"Mr. Dunning seems to think that the Judge of Probate is authorized to reinstate these names that are stricken by the Board of Registrars, referring us to General Acts of Alabama, regular session of 1927 and special session 1926-27, Page 276. Quote: If within such ten days any voter shall reasonably satisfy said judge of probate by proper proof that any name should be added to such list, his or her name shall be added thereto.

"We are enclosing this petition and would like for you to let us know as soon as possible, if we have authority to reinstate this particular party."

In reply, I wish to advise that in my opinion the Acts of 1926-27, page 276, does not authorize the Judge of Probate to reinstate a name on the qualified list of voters, when said name has been stricken from the said list by the Board of Registrars.

You quote an extract from the Acts of 1926-27, which if read in connection with the two preceding sentences is as follows:

"The Judge of Probate shall after the first day of February, 1922, and of each year thereafter, compare such official list of registered electors with the poll tax lists which have been furnished him by the tax collector, and shall ascertain from such comparison the names of such persons on the official list of registered electors who have failed to pay any poll tax which they are legally due, and by such comparison and other available information, said Judge of Probate shall make correct alphabetical lists of all the qualified electors registered by precincts and of districts of precincts where precincts have been divided or subdivided, and who have paid all poll tax due. Said lists so made up shall be published by him in some newspaper with a general circulation in said county on or before the 15th day of April, 1922, and of each two years thereafter, and together with said lists there shall also be published a certificate that said list constitutes the correct list of all qualified electors who will be entitled to vote in any elections held in said county

from the time of such publication until the first day of May of the next succeeding year, and also a notice that any voter duly registered whose name has been inadvertently or through mistake omitted therefrom and who has paid all poll taxes due and who is legally entitled to vote shall have ten days from said publication to have his or her name entered upon said list of qualified voters. If within such ten days any voter shall reasonably satisfy said judge of probate by proper proof that any name should be added to such list, his or her name shall be added thereto." (Emphasis supplied).

Considering the above quotation as a whole, the legislative intent becomes clear. The Judge of Probate has authority to reinstate any name which had been omitted from the published list, here provided for, only when such name is omitted through inadvertence or error on his part. No authority to reinstate a name stricken by the Board of Registrars is here given.

The opinion of the Attorney General to Hon. A. H. Glasgow, Judge of Probate, Heflin, Cleburne County, Alabama, under date of April 25, 1932, in my judgment is a correct interpretation of the law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936

Hon. W. C. Batson,
Judge of Probate,
Chambers County,
LaFayette, Alabama.

Elections — Liner — Precinct Liner allowed same choice of citizenship for voting purposes as is allowed County liner.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 12, 1936, requesting my opinion as follows:

"Will you please advise me if under the law a beat liner is allowed to select his beat as a County liner is.

"In our County we have a good many people who have voted in Five Points beat for a number of years, which is beat five, while as a matter of fact they really live in beat one, but the town of Five Points is in both beats.

"If they are required to vote in beat one they will have to go several miles to the voting precinct. They find it more convenient to vote in Five Points Box. This condition exists in perhaps several of our beats."

In reply, I wish to advise that in my opinion a "beat or precinct liner" may exercise the same choice concerning his place of voting as is allowed to

one living on a county line. This choice must be exercised in accordance with the provisions of Sections 367 and 368 of the Code of 1923.

See also *Danforth v. Nabors*, 120 Ala. 430, 24 So. 891. I further refer you to an opinion of the Attorney General to Hon. J. F. Posey, Judge of Probate, Autauga County, under date of February 27, 1936, copy of which is herewith enclosed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 29, 1936

Hon. J. R. White, Chairman,
Walker County Board of Revenue
Jasper, Alabama.

Costs — County Board of Revenue not authorized to pay costs in mandamus proceeding against County Chairman where court taxes costs against defendant individually.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of December 20, 1935, in which you request my opinion as follows:

"We desire an opinion with reference to the payment of cost in the case of *J. M. Gray, as Chairman, etc. vs. State Ex Rel L. C. Garrison, et als*, decided by a majority of the then Walker County Commission. Under the Local Acts Special Session 1932, page 28, Section 8 thereof, it was made the duty of the Chairman of the Commission to sign all warrants drawn on the County Treasury in payment of legal claims. *J. M. Gray*, Chairman of the County Commission, refused to sign or approve this warrant alleging by doing so that it would render the County unable to meet its preferred claims. Thereupon on the 20th day of April, 1935, mandamus proceedings were filed in the Circuit Court of Walker County requiring him as Chairman to sign the said warrant. The suit was filed against him as Chairman of the Walker County Commission. He answered the said petition and a hearing was had thereon in the lower Court and the lower Court made an order requiring him to sign the

said warrant. Thereupon he appealed the case to the Supreme Court of Alabama and the court affirmed the lower Court's decision on the date above mentioned.

"We hand you certified copies of minutes of January 2, 1935, January 7, 1935 and January 19, 1935, which contain all of the record proceedings of the County Commission with reference to this proceeding. It will be noted that on January 7, 1935, the County Commission employed an attorney to represent Chairman Gray in this proceeding. The other matters necessary to be considered in this connection are shown by the resolutions.

"The Circuit Court adjudged the cost against J. M. Gray individually. A copy of the said judgment is herewith submitted. A motion was made in the Circuit Court to retax the cost on various grounds but the court refused to retax the cost. As stated heretofore, the case was filed against J. M. Gray as Chairman of the County Commission of Walker County, Alabama. The motion raised the question, among others, that the suit was not against him individually and that it was improper to tax the cost against him individually.

"When the lower Court decided the case against Chairman Gray he thereupon sought approval of the County Commission to appeal the case, but the approval was not granted. Mr. Gray has paid the court cost accruing in the Lower Court both on original trial and for the appeal and now presents a bill therefor to the present Board of Revenue for repayment to him for the cost so paid. There has also accrued on said appeal costs in the Supreme Court in the amount of \$14.50.

"Under the facts stated herein we desire to know if the Walker County Board of Revenue would be authorized to repay Mr. Gray for the court cost paid by him. And we also desire to know separately if the Board of Revenue may pay the court cost accrued in the Supreme Court in this proceeding. If there are any other facts you desire to know or if the statements herein are not clear please advise us.

"On the appeal to the Supreme Court the refusal of the court to retax the cost was not assigned as error. We should like to have an opinion on that at your very earliest convenience."

I am of the opinion that the Board of Revenue would have no authority to pay court costs in the case to which you refer.

In accordance with your statement, the Court taxed the costs against Mr. Gray. Section 7221 of the Code of Alabama, 1923 provides that the costs may be taxed at the discretion of the Court.

Further, it is indicated in several ways that the Legislature intended in a case such as you mention, that the court costs should be paid by the individual. Section 8984 of the Code of 1923, provides for instance, that in case a proceeding is brought against an officer and that officer dies during the pendency of the proceeding and the succeeding officer shall do the thing

for which the action was brought, the costs shall be taxed against the person who has died, or who has vacated the office. Section 8985 makes provision that if one officer in a group is prevented from performing a duty by the refusal of other officers in that group, under certain conditions, he would not "be liable for any part of the costs." These two facts indicate therefore that the Legislature intended under certain circumstances for the individual to be liable for the court costs.

It is interesting to note that in Section 8984, *supra*, the Legislature has specifically provided that "all questions of costs under this Chapter shall rest in the discretion of the Court."

In further reference to costs, subsection 21 of Section 6755 of the Code, as amended 1927 and 1931, in defining the authority of the County Commissioners Courts, the Legislature provides as follows:

"To pay out of any funds in the county treasury, all the expenses, including a reasonable attorney's fee, incurred by the County Treasurer, in resisting the payment of any warrant, where said resistance on the part of the county treasurer is **successful**." (Underscoring ours.)

By specifically providing for the payment of expenses where the action is successful, the Legislature has inferentially prohibited the payment of expenses where the case is unsuccessful on the part of the State official.

In the State of Alabama, a Probate Judge was required to pay the court costs in a mandamus case. — *Hudgins v. State ex rel A. T. Hicks & Co.*, 145 Ala. 499, 39 So. 717.

In the case of *Roberts v. U. S.* 13 App. (D. C.) 38 (Aff. 176 U. S. 221, 44 L. Ed 443) it was held that in mandamus proceedings against the Treasurer of the United States in his official capacity, the fact of his being a public officer does not preclude costs being awarded against him personally if he is the unsuccessful party.

The general rule as stated in *Corpus Juris*, (38 C. J. p. 954, Par. 760), is:

"The general rule is that public officers are personally liable for costs incurred in mandamus proceedings to compel them to perform duties which they are required by law to perform. In this case, as in the case of judicial officers, it has been argued that it would entail a hardship where an officer refused to act in case of doubt; but in the absence of discretionary power in the statute the rule has always been enforced. Nevertheless, in a number of jurisdictions, especially in those where the court is vested with discretion in the matter of allowing costs, costs will not necessarily be awarded against a public officer or board, even though cast, and where refusal to perform the act in question was in the exercise of good faith and on reasonable grounds costs will not be awarded against such board or body, although the writ goes against them."

As stated above the question of costs is in the discretion of the Courts of Alabama and if they have been awarded against Mr. Gray individually, I

am of the opinion that the County Board of Revenue would have no authority to either repay Mr. Gray for the court costs paid by him or to pay any part of the court costs accruing in the Supreme Court in this proceeding.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 2, 1936

Dr. J. A. Keller,
State Superintendent of Education,
Capitol.

Under Section 3 of Act No. 507 found at page 1092 of the General Acts of Alabama, 1935, the six persons from whom the trustees of a school are designated, are elected or nominated at a mass meeting composed of parents and guardians of children in attendance at a particular school.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of April 21, as follows:

"Reference is made to Section 133 of the School Code of 1927 as amended September 11, 1935. (Section 3, Act 507, S. 424 Chestnut, Page 1092 General Acts 1935) which reads as follows:

"Section 3. That section 133 of the Alabama School Code of 1927 be so amended as to read as follows: 133. SCHOOL TRUSTEES: QUALIFICATIONS AND SELECTION. — The county board of education shall appoint for every school in the county from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school; provided, that the term "patrons" as used herein shall be construed to mean the parents and guardians of children in attendance at the school and, whether parents or guardians or not, qualified electors residing in the attendance district of the school."

"Your attention is directed to the closing proviso supra reading as follows: 'that the term "patrops" as used herein shall be construed to mean the parents and guardians of children in attendance at the school and, whether parents or guardians or not, qualified electors residing in the attendance district of the school.'"

"Since the law provides no district with definitely defined geographical limits for attendance at each school, but only one or more attendance district for the enforcement of the Compulsory Attendance Law, (See Section 317 School Code of 1927) it is not possible to administer the provision of the law which attempts to include as 'patrons', with the right to vote in mass meetings, 'qualified electors residing in the attendance district of the school.'

"Please advise me whether as State Superintendent of Education I may direct county boards of education to disregard that provision of Section 133 supra which undertakes to include as 'patrons', with the right to vote in mass meetings, 'qualified electors residing in the attendance district of the school'."

I have examined Section 133 at page 57 of the School Code of 1927, which section, as amended, appears as Section 3 of Act No. 507, page 1092 of the General Acts of Alabama of 1935.

Section 133 of the School Code of 1927 provides:

"133. Trustees, How Selected. — The County Board of Education shall appoint for every school in the County from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the County Board of Education, through the County Superintendent of Education from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school."

Section 3 of Act No. 507, page 1092 of the General Acts of Alabama of 1935 provides:

"Section 3. That section 133 of the Alabama School Code of 1927 be so amended as to read as follows: 133. SCHOOL TRUSTEES: QUALIFICATIONS AND SELECTION. — The county board of education shall appoint for every school in the county from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school; provided, that the term 'patrons' so used herein shall be construed to mean the parents and guardians of children in attendance at the school and, whether parents or guardians or not, qualified electors residing in the attendance district of the school."

Under Section 3, just quoted, the word "patrons" is defined to mean:

" * * * the parents and guardians of children in attendance at the school

and, whether parents or guardians or not, qualified electors residing in the attendance district of the school."

It will be noted that the word "patrons" was not defined in Section 133 of the School Code of 1935. It appears that Section 3 of the Act of 1935 merely amends Section 133 of the School Code of 1927 by adding thereto a definition of the word "patrons".

It will be noted that in the amendment are found the words, "attendance district of the school." The Legislature was evidently laboring under an impression that the school laws of Alabama provide for district, of definite boundaries from which the children who attend the school are drawn.

Sections 127, 151 and 317 of the School Code of 1927 refer to compulsory attendance districts, but these three last mentioned sections have to do with the enforcement of the compulsory school attendance laws. I can't conceive that the Legislature intended that all of the qualified electors residing in a compulsory attendance district should be allowed to participate in the election at which six persons are nominated. Section 133 of the School Code of 1927 sets up a plan whereby six discreet competent and reliable persons are nominated by the patrons of a school and from the six, the county board of education selects three to act as trustees for the school. The definition of patrons in Section 3 of the 1935 Act adds qualified electors residing in the attendance district of the school. If the new part added to Section 3 is construed literally, it would mean that all of the qualified electors in a compulsory attendance district would be allowed to participate in the election of the six persons from whom the three trustees are later chosen. As a matter of fact, the words, "attendance district" are not clear in meaning. The only attendance districts known to the school laws of this State are the compulsory attendance districts mentioned in the sections referred to hereinabove. There are no geographical boundaries of a district from which a certain school draws its pupils. I am sure the Legislature did not intend that qualified electors residing in compulsory attendance districts should be allowed to participate in the selection or election of the six persons mentioned in both Section 133 of the School Code of 1927 and Section 3 of the Act of 1935. As a matter of fact, there are a large number of counties in Alabama which have only two attendance districts and there are still other counties that have only one attendance district. If a literal interpretation is given the words used by the Legislature in the amendment, and if we assume that the attendance districts referred to are compulsory attendance districts, we would have the following situation: One of the schools decides to select six persons from whom the trustees are later designated. All of the qualified electors in compulsory attendance district A would participate in the election of the six persons. I have in mind a county in Alabama which has only one compulsory attendance district. There are as many as twenty-five different schools located in this attendance district. One of the schools in that district in that particular county decides to select the six persons from whom the three trustees are designated. If the amendment in Section 3 were construed literally, all of the qualified electors in that attendance district would participate in the selection of these six persons. This would mean that at least half of the voters in this particular county would participate in such a mass meeting. Indeed, a group of qualified electors residing many miles away from the school, if they so chose, could entirely defeat the will of the parents and guardians who actually have children in the

school for which the trustees are to be selected. It is perfectly conceivable that if the amendment is given a literal interpretation, the parents and guardians of children attending a certain school would have very little voice in the selection of the trustees who are to represent the school. The qualified electors in any of the compulsory attendance school districts in Alabama, if they should gather in sufficient force for the purpose of assisting in the selection of these six persons, could defeat the will and desire of the parents and guardians who have children in a particular school.

Under the school laws of the State of Alabama, the Superintendent of Education and the County Board of Education decide the location of schools. A school has no well defined district from which the children are drawn. There is no such thing in Alabama as a well defined area from which a certain school draws its pupils. The author of the 1935 Act evidently proceeded on the assumption that under the school laws of this State schools draw their pupils from a certain well defined section, the boundaries of which are well known. Such is not the case, for obvious reasons: A certain school may draw or take care of ten pupils residing eleven miles northeast of the school and three pupils residing one-half mile southwest of the school. Moreover, there are different types of schools and the academic status of the pupil would determine the school which he or she would attend.

It is my judgment that the Legislature intended to say this: That the six persons from which the trustees are later designated are selected at a mass meeting composed of the parents and guardians of children who attend a particular school. It would not be difficult to include the qualified electors in a certain area surrounding the school if the children attending the school were drawn from any particular, well defined area, but such is not the case. The Legislature must not be convicted of doing a nonsensical and perfectly ridiculous thing. I therefore, do not believe that the Legislature intended that the qualified electors in a compulsory attendance district should be allowed to participate in the selection of the six persons from whom the three trustees are selected.

It is my judgment that you may proceed to advise the County Superintendents of Education and the County Boards of Education that the six persons are selected at a mass meeting participated in by the parents and guardians of the children who attend a particular school. This is a just, fair and reasonable construction of the amended section and it is my judgment that this is what the Legislature intended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Theo Hurt, Clerk,
Circuit Court of Perry County,
Marion, Alabama.

May 8, 1936

Where a suit is brought against the defendant for damages and the verdict is for the defendant for the cost, Section 7805, Code of Alabama, 1923, does not apply to the defendant.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 11, 1936, in which you request my opinion as follows:

"A brings suit against B for damages. The jury brings in a verdict for the defendant B.

"The Clerk issues execution against the Plaintiff for the costs of this suit, which is returned 'No Property'.

"As I understand it, I am at my rows end. Please advise me if I am correct, or can I issue execution against the defendant B for the cost incurred by him.

"I am aware of the fact that when the plaintiff recovers judgment and execution is returned "No property" against the defendant, I can go on the plaintiff for the costs incurred by him."

Under the facts stated by you, I know of no way you can collect this cost if you cannot make it out of the plaintiff. Section 7805, Code of Alabama, 1923, does not apply, as it is applicable only to the plaintiff and is as follows:

"When against plaintiff for his costs. — When execution against the defendant is returned 'no property found' execution may issue against the plaintiff, in the name of the clerk or the register of the court, for all the costs created by him in obtaining his judgment.

Shackleford v. State, 204 Ala. 362.

Biennial Report Attorney General 1922-24, p. 84.

I might say that this action being in tort (which I am presuming) and the plaintiff having lost in his action he has no exemption for cost. **Northern v. Hanner**, 121 Ala. 587.

Sections 7805 and 7263 both specifically authorize the issuance of execution against the plaintiff for the costs created by him, when execution issued against the defendant is returned "No property found."

Where, though as in your case there was judgment against the plaintiff for costs and a return of execution issued against him "No property found", I do not find any specific authority to issue execution against the defend-

ant for that part of the costs incurred by him or for any portion. The definite provision that execution for the costs incurred by the plaintiff can be issued against him and the absence of a similar provision applying to the defendant, shows, in my opinion, a legislative intent that execution cannot be issued against the defendant in such cases.

As to whether you are at your "row's end" as you suggest is another question. I call your attention to the following cases:

South & N. R. R. Co. v. Bradley, 84 Ala. 469;

Danforth v. McClellan, 72 So. 104.

Biennial Report of Attorney General 1922-24, p. 132.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936

Hon. Josh Stanford, Sheriff,
Choctaw County,
Butler, Alabama.

Fees allowed sheriff for attendance upon the various terms of Court — Circuit, Probate and County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 24, 1936, in which you request my opinion as follows:

"I would thank you to give me an opinion on the following matters:

1. As sheriff of Choctaw County, what am I entitled to for attending special terms of the Circuit Court where a jury is in attendance?
2. What am I entitled to for attending regular terms of the Circuit Court where jury is attending?
3. What am I entitled to for attending Probate Court where a jury is not attending?
4. What am I entitled to for attending terms of the County Court?

5. What am I entitled to for attending non-jury terms of the Circuit Court?

Answering your first inquiry, I call your attention to Section 3741 of the Code of Alabama, 1923, where it says: "For attendance each day on such court, to be paid by the County, \$2.00." Of course, this has reference to regular and special terms of the Circuit Court or Court of like jurisdiction for the trial of capital or other criminal cases.

The paragraph just preceding the one quoted above and the one quoted must be construed in pari materia to get at the true intent of the statute or what is referred to in that paragraph, supra.

Opinions of Attorney General, Office Edition, Book 4-A, p. 168.

Therefore, your fee for attending special terms of the Circuit Court for the trial of criminal cases where a jury is in attendance is \$2.00 per day.

Answering your second inquiry I call your attention to Section 7287, Code of Alabama, 1923, where it says:

"Attendance upon the Probate Court when a jury is in attendance or upon the Circuit Court where a jury is in attendance, each day to be paid out of the County Treasury, \$3.00."

Therefore, your fee for this service is \$3.00 for each day's attendance. This refers to civil terms.

Biennial Report of Attorney General 1920-22, p. 445;

Opinions of the Attorney General, Office Editions, Book 3-A, p. 7.

Answering your third inquiry, I find no fee provided for attendance upon the Probate Court where there is no jury in attendance.

Answering your fourth inquiry, I call your attention to Section 3758, Code of Alabama, 1923, where it says:

"For each day's attendance by the sheriff upon such court, \$2.00."

This appears under the title "fees in the county court."

Opinions of the Attorney General, Office Edition, Book 3-A, p. 188.

Answering your fifth inquiry, I find no authority of law for paying the sheriff for attendance on a non jury term of the Circuit Court.

Tolbert v. Hale County, 131 Ala. 143;

Opinions of the Attorney General, Office Edition, Book 6-A, page 117.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 8, 1936

Hon. W. A. Austin,
Sheriff Elmore County,
Wetumpka, Alabama.

1. Sheriffs are paid for feeding prisoners charged with bastardy in the same way they are paid for feeding other prisoners charged with criminal offenses.

2. Sheriffs receive the costs to which they are entitled in prosecutions arising under Section 5571 of the Code as in other misdemeanor cases.

3. The fees in cases arising under Chapter 157, Code of Alabama, 1923, are paid as is provided by Section 4492, Code of Alabama, 1923.

4. Sheriffs are entitled to \$5.00 for summoning special jury in capital cases as authorized by Section 3741 of the Code.

5. There is no authority of law for paying a sheriff for waiting on non-jury terms of the court.

6. There is no authority of law for paying the sheriff for waiting on what is commonly known as Inferior Court.

7. How sheriffs are paid for feeding and caring for insane and juvenile prisoners.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your request for my opinion as follows:

"1. How is a sheriff to get pay for feeding a prisoner charged with bastardy?

"2. What is a sheriff supposed to collect for serving a warrant, bond and summoning witness in non-support cases?

"3. How and from **whom** does a sheriff collect his fees in Juvenile cases?

"4. How and from what funds am I supposed to collect fee for serving special jurors in capital cases.

"5. Are sheriffs allowed pay for waiting on non-jury term of court?

"6. How does a sheriff draw pay for waiting on Inferior Court?

"7. What rate per day is the county supposed to pay for feeding its insane and juvenile prisoners?"

Answering your first request, I advise that you are paid for feeding a person charged with bastardy as in all criminal cases. While it is true bastardy cases are quasi criminal yet they are for all intents and purposes criminal cases. They are prosecuted in the name of the State and by the State Solicitor.

Therefore, if the defendant is convicted and fails to pay the cost of refuses or fails to make bond for the support of the bastard child, then in this event he must be sentenced to hard labor for the county. *Paulk v. State*, 52 Ala. 427; 92 Ala. 91. *Grace v. State*, 16 Ala. App. 366.

Answering your second request, if the person you refer to is prosecuted under Section 5571, Code of Alabama, 1923, subsection 8, which is as follows:

"Any able-bodied person who shall abandon his wife and children, or either of them without just cause, leaving her or them without sufficient means of subsistence or in danger of becoming a public charge."

You get your cost just as you do in all other misdemeanor cases. In the last analysis, it is just a prosecution for vagrancy, which is a misdemeanor.

Answering your third inquiry, I am presuming you are inquiring about costs which arise under Chapter 157, Code of Alabama, 1923, Vol. 2, page 445. Acting under this presumption, I call your attention to Section 4492, Code of Alabama, 1923, which Section is part of Chapter 157, supra. See opinion of the Attorney General Office Edition Book 4-A page 194.

Answering your fourth inquiry I call your attention to Section 3741, Code of Alabama, 1923, which reads as follows:

" * * * For summoning jury in capital case, or at any special court for the trial of criminal to be paid out of the county treasury, \$5.00."

I also call your attention to an opinion of this office written July 10, 1935, to Hon. George M. Burke, Jr., Sheriff of Talladega County. Biennial Report of the Attorney General, 1930-32, page 379.

My answer to your fifth inquiry is in the negative. See *Torbert v. Hale Co.*, 131 Ala. 143, cited in opinion to Hon. W. A. Austin, Sheriff, Elmore Co., Wetumpka, Ala., September 7, 1935 (Op. A. G. Off. Ed. Bk. 6-A, pg. 117).

My answer to your sixth inquiry is in the negative. I find no authority of law for paying the sheriff for waiting on Inferior Courts. See opinion to Hon. R. C. Beverley, sheriff Randolph County, Wetumpka, Alabama, June 10, 1935 (Op. A. G. Off. Ed. Bk. 4-A, pg. 168.)

Answering your seventh inquiry I call your attention to Section 2798, Code of Alabama, 1923, as to the care of insane persons which is as follows:

"2798. Compensation to persons caring for insane paupers. — The court of county commissioners and county boards of revenue shall provide a schedule of fees in their respective counties, to be paid out of the county treasury on their order, to the county officers, or any person duly deputized by such officers, to temporarily provide for the care and maintenance of any person alleged to be insane, when such person has no means of paying such expense, pending an investigation into the mental status of such alleged insane pauper, before the probate judge of such county. Such judge shall at the same time, hear evidence and decide therefrom the question of the ability of such alleged insane pauper to pay such expenses."

I do not think by commenting on the above statute, I could make this any clearer than the language of the statute, itself. I might say, however, if a person who is insane is placed in jail charged with a criminal offense, his feed bill is paid as is that of all other persons charged with a criminal offense, until and up to the time he is judicially ascertained to be insane, then after this the statute above quoted comes into operation and regulates the care of such prisoner. See Bien. Rep. Attorney General 1930-32, pg. 244-247.

Now as to feeding juvenile offenders, there are so many things that enter into this that I am in doubt as to just what you have in mind but will say, if a juvenile is placed in jail charged with a criminal offense, then his feed bill is paid as other feed bills of persons charged with crime.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936

Hon. J. L. Reynolds,
Tax Collector,
Barbour County,
Clayton, Alabama.

Schools — Special three mill district tax election voting the levy and collection of tax for seventeen years from September 30, 1936, authorizes collection of tax for tax year of 1936 under facts stated.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 6, 1936, together with other data, from which the following facts appear:

A special three mill district school tax for the City of Eufaula was duly voted in an election held on January 28, 1936. On January 29, 1936,

the county governing body ordered, adjudged and decreed that the tax in question shall be levied and collected annually for a period of seventeen years from September 30, 1936 to October 1, 1953. The ballot provides in substance as follows:

"Election January 28th, 1936, to determine whether or not to levy and collect a tax of thirty cents on each one hundred dollars' worth of taxable property in city of Eufaula, Alabama (districts number 53 Barbour County, Alabama), to begin from September 30th, 1936, and to continue for seventeen (17) years from said September 30, 1936, and to be for public school purposes within said city and district."

In view of the above you request my opinion as follows:

Assuming that all of the procedure relative to the voting and levying of the tax in question to be proper, will the tax in question be collectible in 1936 or 1937.

In answer to your inquiry, it is my opinion that the tax in question is collectible in the tax year beginning October 1, 1936.

The proposition submitted to the voters of the district, and ratified in the election, was to levy and collect the special three mill tax annually for seventeen years running from September 30, 1936. The election was held on January 28, 1936, and the order of the county governing body was made on January 29, 1936, within the assessment tax year of 1935-1936.

It will be noted that the tax was to be levied and collected for seventeen years from September 30, 1936. If same is to be collected seventeen years from September 30, 1936, it necessarily follows that the first collection shall begin October 1, 1936. If this be considered as retroactive it does not invalidate the tax. — *Alexander v. Board of Revenue*, 219 Ala. 110, 121 So. 390. See also *Perry County v. Selma M. & M. R. Co.* 58 Ala. 546; *Biennial Report of Attorney General*, 1914-1916, p. 270.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. C. E. Corprew, Sheriff,
Tallapoosa County,
Dadeville, Alabama.

May 8, 1936

Managers and Clerks — Counting Absentee Ballots — Managers and Clerks who count and certify the absentee ballots of the various counties of the State are entitled to pay for the service as other Managers and Clerks of the various precincts are paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 24, 1936, in which you request my opinion as follows:

"I would thank you to give me an opinion as to whether or not the managers and clerks who handle and count absentee ballots in general and primary elections under an Act approved April 19, 1933 (General Acts, Extra Session 1933, p. 193), can be paid for this service by the County?"

I call your attention to Section 5 of an Act approved April 19, 1933 (Acts 1933, p. 193) which is as follows:

"Section 5. In addition to the managers and clerks now provided under the laws of this state for elections, there shall be, for all future elections, whether primary, general, special or municipal, appointed at the same time and in the same manner by the appointing board of the county or city, three managers, two clerks, and a returning officer, who shall meet in the office of the Judge of Probate of the County, (or, except in the case of municipal elections, in a place to be designated by the appointing board) on the day of said election and remain, as officers at other polling places, for the purpose of receiving the ballots of absentee voters from the Judge of Probate, or other person authorized to handle them, as provided herein. The absentee ballots cast as provided by law shall be by said election officers specified in this section, tabulated separately by precincts and returns thereof made as now provided by the laws governing the conduct of elections. The managers, clerks and returning officer provided for in this section shall be governed in all respects in the performance of their duties by the laws governing all elections, and shall be subject to the same penalties as other election officers. Provided, however, that the officers appointed under the provisions of this section may begin tabulating said absentee ballots as soon as they are received by them from the person authorized to deliver same. Provided further, that this section shall not apply to municipal elections in cities and towns whose population is less than 10,000 inhabitants."

You will note from the above that the managers and clerks who are charged with counting and certifying the absentee ballots are just as much managers and clerks of an election as are the managers and clerks who hold an election in the various precincts in the county. Then if the managers and clerks of the various voting places in the county can be paid by the County, it naturally follows that the managers and clerks who count and certify the absentee ballots can likewise be paid.

I call your attention to Section 509, Code of Alabama, 1923, which is as follows:

"509. Pay of election officers — The returning officer, the inspectors and clerks, shall each be entitled to two dollars, and the returning officer, in addition to five cents a mile in going to the courthouse and returning to the place of holding the election; the several claims to be paid

out of the county treasury, on proper proof of the service rendered, to be preferred claims, payable from the money in the treasury not specially otherwise appropriated."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936

Hon. H. W. Clayton,
Clerk of the Circuit Court,
Marshall County,

Habeas Corpus: Clerk of the Circuit Court is not entitled to be paid out of the Fine and Forfeiture Fund for preparing a transcript for a defendant who appeals from the Circuit Court to the Court of Appeals of Alabama in a habeas corpus proceeding.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 10, 1936, in which you state:

"Please advise me as to whether or not the Clerk of the Circuit Court is due F. & F. Claims from the Fine and Forfeiture Funds in the case of State of Alabama v. Thomas L. Haney as follows:

"This man was indicted by the Grand Jury of Marshall County for murder in the 1st degree. Bail having been denied, his attorneys appealed to the Court of Appeals. The Court of Appeals affirmed the decision of the lower court. This man was tried on the charge of murder in the first degree and was acquitted on his plea of insanity."

You request my opinion:

"Is the Clerk of the Circuit Court entitled to the transcript which he made to the Court of Appeals, chargeable to the Fine and Forfeiture Funds of said County?"

In my opinion your question should be answered in the negative.

The liability of the fine and forfeiture fund for the payment of costs and fees is entirely of statutory origin, and, therefore, it is necessary to bring a claim within the operation of the statute, as a necessary prerequisite to fixing any charge on said fund. — *Jackson v. Derrick*, 117 Ala. 365, 23 So. 193; *Alston v. Yerby*, 108 Ala. 480, 18 So. 559.

In my opinion habeas corpus is a civil proceeding, although the statutes relating to habeas corpus are in the Criminal Code, habeas corpus is not a criminal remedy or proceeding. A writ of habeas corpus sued out by one

arrested for crime, is a civil writ or proceeding brought by him to assert the civil right to personal liberty. It is a writ to enforce a civil right. — Ex parte Tom Long, 108 U. S. 556, 27 L. Ed. 826, 2 Sup. Ct. 871; Riddle v. Dyche, Warden of the United States Penitentiary at Atlanta, Georgia, 236 U. S. 333. See also 29 Corpus Juris, p. 8, and cases cited thereunder.

In the case of Ford v. Dilley, Sheriff of Woodbury County, 156 N. W. p. 513, the Supreme Court of Iowa held that a habeas corpus proceeding to require admission to bail was a civil and not a criminal proceeding.

As habeas corpus is a civil proceeding, in my opinion there is no authority for the costs incurred to be paid out of the County Fine and Forfeiture Fund.

An opinion of this office to Hon. John B. Weaver, Judge of Probate, Double Springs, Winston County, Alabama, under date of June 19, 1931, is hereby overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936

Hon. W. C. Batson,
Judge of Probate,
Chambers County,
LaFayette, Alabama.

Counties — may pay transportation charges of manager of Re-employment Service covering visits to such County.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows:

"The re-employment office here has a man who comes once a week to Chambers County, and he draws a very small salary, his bus fare amounts to about \$8.00 a month; please advise me if the County could take care of this small amount out of the general fund."

I am of the opinion that your inquiry should be answered in the affirmative.

Section 6755, subsection 6, of the Code of Alabama 1923, as amended by an Act of 1931, page 759, authorizes the Court of County Commissioners or other like governing body to provide for the support of the poor as follows:

"To make such rules and regulations for the support of the poor in the county as are not inconsistent with any law of the State."

In view of an opinion rendered by this office on July 2, 1934 to Hon. B. L. Malone, Judge of Probate, Morgan County, (Biennial Report Attorney General, 1932-1934, page 595) in which it was held that the Section above quoted was sufficiently broad to allow the County Board of Revenue to pay the office rent, etc. of the National Reemployment Service, I believe it would be proper for the county government to make an appropriation to cover the traveling expenses of the party mentioned in your inquiry, where the accounts are properly audited and certified for payment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 9, 1936

Hon. H. M. Brock,
Tax Collector, Fayette County,
Fayette, Alabama.

Tax Collector — Section 178 of the 1935 Revenue Act requires the Tax Collector to publish only the list of insolvents in a newspaper twice during the month of July.

The costs incurred in said publication are to be paid by the State, County and School District in proportion to the rate of taxation.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 1, 1936, in which you state:

"On page 87, Section 178 of the 1935 Revenue Act, the law provides that the Tax Collector shall cause the list of insolvents to be published during the month of July, but does not certify as to who shall pay the expense of this advertising."

You request my opinion.

"Please advise as to whether this means the list of insolvents only or does it mean to cover the list of insolvents, errors and exemptions also.

"Who is to assume the cost of this advertising and from what fund shall it be paid?"

In answering your first question, it is my opinion that you are only required to publish the "list of insolvents" and are not required to publish the "list of errors in assessments".

The statute is very plain and is not ambiguous in any respect.

I wish to call your attention to the following part of Section 178:

“ * * * The Tax Collector shall cause the said 'list of insolvents' to be published twice during the month of July following the submission thereof to the June term of the Court of County Commissioners or other Court of like jurisdiction. * * * ”

In answering your second question, it is my opinion that the costs incurred in said publication should be paid by the State, County and School District in proportion to the rate of taxation.

I suggest that when you receive the bill for publishing the list, that you send same to Hon. Chas. W. Lee, State Comptroller, who will apportion the costs.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 13, 1936

Hon. J. W. Brock,
Clerk and Register,
Circuit Court, Coffee County,
Enterprise, Alabama.

Costs — When paid —

If a defendant is convicted and sentenced to the penitentiary or to hard labor for the county and is delivered to the Convict Department, the cost should be paid even though the defendant dies before the sentence is complete and the fact that his case is pending before the Supreme Court or Court of Appeals at the time he dies could make no difference.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 27, 1936, in which you request my opinion as follows:

“At the request of Mr. Purifoy, Examiner of Accounts, am writing for an opinion as to payment of costs in cases where defendant died in penitentiary or at hard labor while his case was pending in the Court of Appeals.”

Answering this request, I call attention to Section 3670, Code of Alabama, 1923, which is as follows:

"Clerk must swear to bill of costs and forward to president of the board; limit; how paid. — After such conviction, the clerk of the court in which the conviction is had, shall make out a bill of the costs in the case, containing no items not enumerated in the preceding sections; he shall make oath to the correctness of each item of said bill, and that the same is a legal charge against the defendant; he shall forward the bill of costs to the president of the Board or the officer discharging his duties, who shall carefully examine the same, and if found correct, he shall request the state auditor in writing to draw his warrant upon the state treasurer for the payment of said bill to said clerk out of the convict fund. No costs shall be paid until the convict has been delivered to the penitentiary officials, and, where a convict is sentenced in more than one case, the costs in the succeeding cases shall be paid when he is delivered to such officials."

From the above section, you will note it says:

"No costs shall be paid until the convict is delivered to the penitentiary." Naturally, the cost must be paid when he is delivered. Therefore, if the convict has been delivered and is in the hands of the Convict Department and dies or escapes, this would make no difference as the officers of the county have complied with the terms of the statute so far as they are concerned. The costs should be paid.

The fact that the case is pending in the Supreme Court or Court of Appeals and while so pending the convict dies or escapes, could make no difference as under the law the convict has a right to serve pending appeal.

What I have said above applies with equal force to hard labor cases, as Section 3675, Code of Alabama, 1928 makes the law governing penitentiary cases applicable in misdemeanor cases.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Attention: Mr. Shaffer

Fine and Forfeiture Fund — Clerk and Sheriff not entitled to claims against, in county court, where nolle prosequi is entered in felony cases.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your request for information as follows:

"Please give me an opinion as to whether the clerk and sheriff are entitled to have their fees paid from the fine and forfeiture fund in felony cases placed on the county court docket where a nolle prosequi is subsequently entered in said county court."

In my opinion your inquiry should be answered in the negative.

It has been held in *Swindle vs. Crocker*, 217 Ala. 199, 115 So. 252, that only those fees expressly provided by law may be taken by the clerk in criminal cases. This applies with equal effect to fees of the sheriff. It is not contemplated that the fine and forfeiture fund should be liable for claims on preliminary hearing where the defendant is discharged.

Section 3755 of the code of Alabama 1923 is the only section of the Code which allows any costs or fees to officers in preliminary proceeding. It certainly allows none in case the defendant is discharged.

Biennial Report of Attorney General 1922-1924, p. 131.

Biennial Report of Attorney General 1918-1920, p. 524.

The opinion to Hon. H. W. Clayton, Clerk of Circuit Court, Marshall County, Guntersville, Alabama, January 18, 1936 (Quarterly Report of Attorney General, Vol. II, p. 58) is hereby overruled in so far as it is in conflict with this opinion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Boards of Revenue or Courts of Commissioners may levy special tax under Section 213, Code of Alabama, 1923, to purchase lot on which to erect jail or other public buildings.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 30, 1936, in which you request my opinion as follows:

"Kindly refer to Section 213 of the Code of Alabama of 1923 which gives the Court of County Commissioners authority to levy and collect a

special tax of one-fourth of one per cent per annum for the erection, construction and maintenance of necessary public buildings, etc.”

In answering the above, I call your attention to Section 213, Code of Alabama, 1923, which is as follows:

“213. Special Tax for county buildings, bridges and roads. — The Court of County Commissioners or other governing body of like jurisdiction in any county in this state, may levy and collect such special taxes as it may deem necessary not to exceed one-fourth of one per centum per annum for the purpose of paying any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public buildings or bridges, or incurred for the erection of public roads since the 28th day of November, 1901, or that may hereafter be created for the erection of public buildings, bridges or roads, which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected.”

I also call your attention to Section 215 of the Constitution of 1901, which is as follows:

“No county in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one half of one per centum; providing, that to pay debts existing on the sixth day of December, eighteen hundred and seventy five, an additional rate of one fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public buildings or bridges or that may hereafter be created for the erection of necessary public buildings, bridges or roads, any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected.”

The Section of the Constitution above referred to and the Section of the Code cited above are almost identical.

Under the above quoted Section, I am of the opinion that you may levy this special tax and it may be used for purchasing a lot on which to erect the annex to the Court house to be used as a jail. You will note this Section says: “or that may hereafter be created for the erection of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively for the purpose for which the same are so levied and collected.”

Littlejohn v. Littlejohn, 195 Ala. p. 614.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936

Hon. H. E. Kendrick,
Tax Collector, Dallas County,
Selma, Alabama.

Property sold to city at tax sale prior to assessment date for State and County taxes and not redeemed is not subject to assessment for the years it is owned by the city, and where assessed, Tax Collector may have same allowed as error under Section 178 of the Revenue Act of 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 12th, in which you state:

"In preparing list of persons and property for advertisement for sale for State and County taxes for the tax assessment year as of October 1, 1934, I find the following condition exists in a number of cases:

"That certain pieces of property were sold to the City of Selma for city taxes or street improvements prior to the assessment date for State and County taxes and have never been redeemed from the city.

"That notwithstanding such sale to the city the property has been assessed upon information or otherwise to the former individual owners.

"Am I as Tax Collector authorized to report such property for allowance as a list of persons or property which has been 'overassessed or wrongfully assessed' as provided by Section 178 of the 1935 Revenue Act.

"The city claims that as the title to the property was in it, that the assessments for State and County taxes made subsequent to the sale to the City were erroneous."

In reply I advise that in my opinion if the property was actually sold to the City of Selma prior to the date it was subject to assessment for State and County taxes, then such property would not be subject to assessment for State and County taxes for the assessment years subsequent to the date it was sold to the City. Of course, if in the meantime individuals had redeemed it from the City, it would again become subject to assessment.

Quarterly Report Vol. 1, October 1, 1935 — January 1, 1936, p. 207.

The opinion holds that a valid sale for taxes passes the title to the State. I am of the opinion that the same conclusion applies to a valid sale for city taxes.

Under Section 91 of the Constitution the State may not tax the property of * * * municipalities. It therefore, follows that if the property was owned by the city, it was not subject to assessment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 16, 1936

Hon. Walter K. McAdory,
Chief, Alabama Highway Patrol,
Montgomery, Alabama.

H. B. No. 125, enacted by the last Legislature, amending Section 51 of Act No. 347 of the General Acts of Alabama of 1927 does not amend, alter or change in any way the provisions of Section 8 of Act No. 58 (General Acts of Alabama 1932, p. 69); the speed of trucks, semi-trailers, trailers and motor vehicles used primarily for the transportation of property is governed by Section 8 of Act No. 58 of the General Acts of 1932.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of April 29, as follows:

"I beg to call your attention to H. B. No. 125, approved April 21, 1936, which Act was passed at the last session of the Legislature. This Act, H. B. No. 125, purported to amend Section 51 of Act No. 347 of the General Acts of Alabama of 1927. An examination of the new Act (H. B. No. 125) discloses that the effect of the amendment is to eliminate subsection 8 of Section 51. In other words, the amended act simply eliminates the following sentence of Section 51: 'Forty-five miles an hour under all other conditions.'

"I now beg to call your attention to Section 8 of Act No. 58 of the General Acts of Alabama of 1932, which section deals with the speed of Motor vehicles used primarily for the transportation of property. Section 8, generally, deals with the size, weight, regulation of and speed of trucks, semi-trailers and trailers.

"I will appreciate it if you will advise me whether it was the intention of the Legislature, in amending Section 51, regarding the driving of a vehicle on a highway, to also amend Section 8 of the 1932 Act, supra. In other words, was it the intention of the Legislature in amending Section 51 to say that the speed of motor vehicles used primarily for the transportation of property should be the same as the speed of motor vehicles mentioned in Section 51."

I have examined H. B. No. 125 enacted by the recent Legislature, and I have also examined Section 51 of Act 347 of the General Acts of Alabama of 1927. I have noted subsection 8 of Section 51, and Section 8 of the 1932 Act, supra.

I find that the Legislature amended Section 51 by merely eliminating subsection 8, as follows: "Forty-five miles an hour under all other conditions."

You inquire whether it was the intention of the Legislature in eliminating subsection 8 of Section 51 to also amend Section 8 of the 1932 Act in such a way as to make the speed regulations of Section 51 apply to motor vehicles used primarily for the transportation of property, mentioned in Section 8.

It is my judgment that in eliminating Subsection 8 of Section 51, it was not the intention of the Legislature to disturb in any way any part of Section 8 of Act No. 58 (General Act of 1932). In Act No. 53 of the General Acts of Alabama of 1932, the Legislature treated the matter of speed of vehicles used primarily for the transportation of property separately. It appears clear from a reading of the entire 1932 Act, that it was the intention of the Legislature to deal specially and specifically with the matter of the speed of motor vehicles used primarily for the transportation of property. I am of the opinion that as regards trucks, semi-trailers, trailers and motor vehicles used primarily for the transportation of property, you and your force may continue, as regards speed to be governed by Section 8 of Act No. 58 (General Acts of Alabama 1932, page 69). There are very good reasons why the Legislature did not intend to disturb Section 8. The speed of trucks, semi-trailers and trailers, and motor vehicles used primarily for the transportation of property is a thing separate and apart from the speed of other types of motor vehicles that use the public highways.

It is my judgment that the amendment by H. B. No. 125 of Section 51 does not amend, alter or change in any way Section 8 of Act No. 58 (General Acts of Alabama 1932).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 16, 1936

Hon. H. B. Gantt, Sheriff,
Covington County,
Andalusia, Alabama.

Suits in detinue —

Liability of sureties on detinue bonds. Sureties on detinue bonds, guaranteeing the successful prosecution of a suit or else agreeing to pay damages or costs that may accrue to the defendant are not liable for the costs by execution issued against them except after their liability has been judicially determined by suit on detinue bond.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 13, 1936, in which you request my opinion as follows:

"I respectfully request your opinion on the following:

"John Doe made an affidavit and bond in Detinue in the Circuit Court of Covington County, Alabama. This suit was against Richard Roe and for recovery of personal property. Sheriff of Covington County took into his possession the property described in the writ. This property was later replevied by defendant. Case came up for trial and was won by defendant. Execution was issued against plaintiff and sureties on the bond. A copy of this bond is hereby enclosed. Please advise whether or not the sureties John Smith and Tom Smith are liable for any part of the cost in this case, the amount of cost being \$93.10."

The copy of the bond on which you desire my opinion is simply a detinue bond required of the plaintiff in case he desires to take possession of the property sued for.

In this bond he agrees to pay the defendant all costs and damages for wrongful complaint, in case he fails to prosecute his case to successful end. Independent of this bond, the plaintiff would be liable for all costs for which execution could issue at once, but this is not true of sureties on the bond for the reason no judgment can be had against them in the original suit as they are not parties plaintiff but only sureties for cost and damages on the happening of certain contingencies.

How are we to know when these contingencies exist? Only when suit is brought on the bond and it has been judicially determined and until this time no execution can issue against the sureties on the original detinue bond. In other words there must be a judicial ascertainment that the covenant of the bonds in some particular have been breached, and this can only be done by suit on the bond. *Orr v. Watson, et al*, 9 Ala. App. 119; *Foster v. Napier*, 74 Ala. 393.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

Hon. T. R. Snead,
Judge of Probate,
Cherokee County,
Centre, Alabama.

May 20, 1936

Judges of the various courts of Alabama are without power to remit fines or sentences or to grant probation in criminal cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 14, 1936, in which you request my opinion as follows:

"Will you please advise me whether or not the County Court Judge has the power or authority to remit a fine or any portion of a fine in a case of violating the Prohibition Law?"

Under the law as it now stands you are without power to remit the fine or to grant probation in any case, as the act so authorizing was held unconstitutional in the case of *Montgomery vs. State* (appealed from Lauderdale County Circuit Court) 163 So. 365.

Quarterly Report of Attorney General October-December 1935, page 243.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 21, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Sheriffs — Compensation for feeding of prisoners governed by terms of Act No. 203, approved July 10, 1935, regardless of the fact that warrants issued may exceed amount prescribed in General Appropriation Bill, Act No. 373, approved September 6, 1935.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of March 27, 1936, which is as follows:

"I respectfully request that you reconsider my question of October 17, 1935 as to whether H. B. 317, approved July 10, 1935, makes a direct appropriation or not.

"You rendered an opinion to me dated November 20, 1935."

You also desire an opinion as to the effect the 1935 Appropriation Bill, fixing a stipulated appropriation to be used for the feeding of prisoners, has on the so-called "Feed Bill", approved July 10, 1935.

Section 4828 of Article 2 of Chapter 168 of the Code of Alabama of 1923, provided that sheriffs for preparing and serving food should be paid a certain amount each day for each prisoner incarcerated.

In 1932 the General Appropriation Bill (General Acts, 1932, p. 325) fixed an appropriation of \$185,000.00 per year. This appropriation covered the fiscal years ending September 30, 1933, 1934 and 1935. On July 10, 1935, the Governor approved Act No. 203, H. B. 317 (General Acts 1935, p. 595), which repeals Section 4828, and at first blush, this Act appears only to increase the scale of compensation to be paid the sheriffs for the feeding of prisoners.

On September 6, 1935, the Governor approved Act. No. 373, H. B. 249 (General Acts 1935, p. 792, 798) in which Act the sum of \$175,000.00 per year is appropriated for the feeding of prisoners for each of the four fiscal years ending respectively September 30, 1936, 1937, 1938 and 1939.

Your inquiry resolves itself into two questions:

First, a reconsideration of our former opinion wherein we held that you could not legally issue warrants to sheriffs for compensation for the feeding of prisoners for the fiscal year 1934 to 1935 in excess of the sum specifically appropriated for the feeding of prisoners in the 1932 Appropriation Bill, even though the 1935 "Sheriffs' Feed Bill" increased the amount of compensation to be paid to the sheriff for the feeding of prisoners.

Second, you desire to know whether or not in the fiscal year 1935-1936 you may issue warrants only to the amount of \$175,000.00 as set out in the 1935 Appropriation Act, *supra*, or whether you must draw warrants in favor of the sheriffs to cover the allowance to them for appearing and serving food to prisoners as provided in H. B. 317, approved July 10, 1935 (Sheriff's Feed Bill), even though to do so would cause you to issue warrants in excess of the sum of \$175,000.00.

In the case of *Nichols v. Comptroller*, 4 Stew. & Porter, p. 157, appears the following language:

"It is conceded that no money can be drawn from the treasury, but in pursuance of an appropriation made by law, but it is not necessary, that there should be an act passed annually, for the appropriation: if there is a general law, fixing the salary, requiring it to be paid at the treasury, annually, this is sufficient."

In the case of *Reynolds, Auditor, v. Taylor*, 43 Ala. p. 420, it was held that subsequent statute, merely appropriating a less sum than that fixed as the salary by the general statute would not operate a repeal by implication of the latter.

Headnote 2 in the case of *Riggs v. Brewer*, 64 Ala. p. 282, is as follows:

"The annual salary of the marshal and librarian of the Supreme Court being fixed at \$2,000 by the general statute (Code Section 586); while the subsequent law, making appropriations for the fiscal years

1879 and 1880, appropriated 'for compensation of the marshall and librarian \$1,500 in each year, in all \$3,000', which appropriations were continued in force until the 1st January, 1881, while the fiscal year ends on the 30th September in each year; and it was further declared that these appropriations 'shall not be construed to be in addition to appropriations for the same purposes' made by any other laws; held that the marshal and librarian was not, during the years 1879 and 1880, entitled to draw more than \$1,500 as his annual salary."

In the case of *Abramson v. Hard*, 229 Ala. pp. 2, 9, appears the following language:

"Under prior rulings of the court no appropriation act was necessary, the Legislature having fixed the amounts of the salaries in Act No. 138 and provided the method of payment. In the case of *Nichols v. Comptroller*, 4 Stew. & Porter, 154, page 157, the court laid down this rule, saying: * * * It is conceded that no money can be drawn from the treasury, but in pursuance of an appropriation made by law, but it is not necessary, that there should be an act passed annually, for the appropriation: if there is a general law, fixing the salary, requiring it to be paid at the treasury, annually or quarter annually, this is sufficient."

From the cases just referred to, it appears that where an appropriation bill fails to appropriate sufficient money to pay the salary of an officer, which is fixed by another general statute, that the subsequent appropriation bill does not affect the officer's right to the salary prescribed by the prior general statute unless said subsequent appropriation bill evidences an intention to do so as was done in the case of *Riggs v. Brewer*, supra. However, in order to answer that part of your inquiry dealing with the fiscal year 1934-1935, it is not necessary to consider the facts as set out in the *Riggs* case, in view of the fact that the Act prescribing the amount which the sheriff should receive for the performance of the particular service was enacted subsequent to the appropriation bill which sought to limit the amount which should be paid to sheriffs for the performance of those duties.

We are, therefore, brought to a consideration of the question as to whether or not this Act No. 203, H. B. 317, approved July 10, 1935, increasing the allowance to which the sheriffs are entitled for the feeding of the prisoners, can be considered the fixation of a "salary" as that term was used in the cases heretofore referred to.

After reconsidering my opinion of November 20, 1935, wherein I held that this Act under consideration does not come within the rule laid down in the cases heretofore referred to, I have come to the conclusion that I was in error.

Act No. 203 prescribes definitely how much the sheriffs shall receive for preparing and serving food to each prisoner. The total amount which a sheriff receives on any particular day or month is, of course, dependent upon the number of prisoners fed on a particular day or during a particular month. This Act, however, must be read in conjunction with Sections 4830, 4831 and 4832, Code of Alabama, 1923, which are as follows:

"4830. MONTHLY STATEMENTS BY SHERIFF. — On or before the tenth day of each and every month the sheriff of each county shall furnish to the court of county commissioners, or board of revenue as the case may be, to the state auditor, and to the state prison inspector, an itemized statement in detail, verified by affidavit, giving a list of all state and county prisoners by name, race and sex, the offense charged, authority for committing, disposition of prisoner, if sentenced, date committed, date sentenced, date discharged, (and) the number of days in jail. The sheriff shall set out the amount of money actually expended for purchasing and supplying of all foodstuffs for feeding prisoners during the month immediately preceding."

"4831. EXAMINATION BY AUDITOR; WARRANT FOR PAYMENT. — Upon the receipt of said statement from the sheriff, it shall be the duty of the state auditor to examine the said statement thoroughly and carefully, and if the total expenditures for feeding state and county prisoners as contained therein does not exceed the amount allowed for feeding each state and county prisoner confined in said jail, as provided in section 4827, he shall draw a warrant upon the state treasurer in favor of said sheriff for the amount expended for feeding said prisoners. But if the sheriff is on a salary basis, as provided for under an amendment to the constitution of Alabama, then in that event the state auditor shall draw a warrant on the state treasurer in favor of such county for the amount so expended. But if the said statement shows that the amount of feeding each state and county prisoner in said jail is in excess of the allowance as provided for in section 4827, then the state auditor shall draw his warrant on the state treasurer only for such amount as will cover the expenditure for feeding said state and county prisoners per day as provided for in section 4827. The state auditor shall also draw a warrant on the state treasurer in favor of the sheriff to cover the allowance to sheriffs for preparing and serving food to prisoners as provided for in section 4828. But if the sheriff is on a salary basis as provided for under an amendment to the constitution of Alabama, then in that event the state auditor shall draw a warrant on the state treasurer in favor of such county for such allowance for preparing and serving food to prisoners."

"4832. FORMS SUPPLIED BY PRISON INSPECTOR. — All records shall be kept and statement made on form prescribed and furnished by the state prison inspector and the state auditor."

When the sheriff has complied with the provisions of the sections just above quoted, the sum to which he is entitled is just as certain as is possible for a compensation based on this kind of service to be.

Under the rule laid down in the cases heretofore referred to, there can be no doubt that if Act No. 203 had provided that the sheriffs should be paid \$5,000.00 per month for feeding prisoners, they would be entitled to receive that amount regardless of the provisions of the 1932 Appropriation Bill.

This being true, I am of the opinion that under the rule laid down in the case of *State ex rel. Turner v. Henderson*, 74 So. p. 344, you may legally issue warrants to the sheriffs of this State for the feeding of prisoners in accord-

ance with the terms of Act No. 203, *supra*, when the sheriffs have complied with Section 4830 of the Code of Alabama of 1923.

In the Turner case, *supra*, it was said:

"Acts 1915, p. 719, authorizing the Attorney General to employ with the approval of the Governor necessary counselors and attorneys, Section 8 of which appropriates money sufficient to meet the expenses incurred under the Act, is a valid appropriation with Constitution 1901, Section 72, providing that no money shall be paid out of the treasury except upon 'appropriation' made by law, though no definite sum or maximum which cannot be exceeded was thereby fixed."

I also call to your attention the case of *Norcross v. Cole*, State Comptroller, 189 Pac. p. 877, wherein the Court held:

"It is true that the Act in question does not name a given amount as a sum which was appropriated to pay the indebtedness, but the intention of the Legislature to incur the indebtedness, and have it paid out of the State Treasury is made clear, and a method is provided whereby the exact amount to be expended in pursuance of the Act may be ascertained not later than ten days after the first Monday in March of each year. In our opinion, this is sufficient for that is certain which is capable of being made certain."

The answer to your second inquiry must necessarily be the same as the answer to your first inquiry unless the fact that the 1935 Appropriation Bill (enacted subsequent to Act No. 203) makes a material difference.

The cases of *Reynolds, Auditor v. Taylor*, and *Riggs v. Brewer*, *supra*, involve the exact question except that in the latter case a subsequent appropriation bill by specific and positive language superseded any other appropriation which might have therefore been enacted. The case of *Riggs v. Brewer* did not overrule the former case of *Reynolds, Auditor v. Taylor*, but drew this distinction: In the former case there was no positive expression by the Legislature that the sum fixed in the Act fixing the salary, as was the case in *Riggs v. Brewer*.

In the 1935 Appropriation Bill, *supra*, I do not find any such expression as was contained in the case of *Riggs v. Brewer*, *supra*, and, therefore, I am of the opinion that the facts here under consideration are in accordance with those in the case of *Reynolds, Auditor v. Taylor*. I am of the opinion, therefore, that I was in error in my former opinion and that during the present fiscal year you may issue warrants in accordance with the terms and provisions of Act No. 203, regardless of the fact you might issue warrants in excess of the amount prescribed in the 1935 Appropriation Bill.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

May 28, 1936

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Justices of the Peace — In Grove Hill, Alabama, Precinct 10, qualified electors are entitled to elect only two justices of the peace, although there are four voting places in said Precinct.

Justices of the Peace should be nominated in a party primary and elected on the first Tuesday after the first Monday in November in 1908 and every fourth year thereafter.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 9, 1936, in which you state:

"Grove Hill precinct, No. 10, has four voting places. In other words, we have precinct 10 box 1, precinct 10 box 2, precinct 10 box 3 and precinct 10 box 4. Is each voting place entitled to elect a Justice of the Peace for that voting box? We have two Justices of the Peace elected for Grove Hill precinct but I am wondering if each voting box is entitled to a Justice of the Peace as already stated above.

"Also advise the proper time for the election of a Justice of the Peace. Is it necessary to have the Justice of the Peace nominated and then elected in November as other officers or is it only necessary to have elect them in the general election?

"Your opinion will be appreciated."

In my opinion your first question should be answered in the negative.

The right to elect a justice of the peace is not predicated on the number of voting places, but on the precinct. In Precinct 10, there might be ten voting places, placed for the convenience of the voters, but the precinct would only be entitled to two justices of the peace.

I wish to call your attention to a part of Section 168 of the 1901 Constitution of Alabama, and Section 8700 of the 1923 Code of Alabama, which are as follows:

"Section 168. In each precinct not lying within, or partly within, any city or incorporated town of more than fifteen hundred inhabitants, there shall be elected by the qualified electors of such precinct not exceeding two justices of the peace, * * * "

"Section 8700. Two justices for each precinct; term of office. — Within the limits of every election precinct there shall be two justices of the peace, elected as provided in the chapter on 'elections', who shall hold office for four years or until their successors are qualified."

For your information, I refer you to Biennial Report of the Attorney General, 1930-1932, p. 71, and in the case of *Wood v. Wood*, 219 Ala. 523, 122 So. p. 835.

In answering your second question, it is my opinion that a justice of the peace should be nominated in a party primary and elected on the first Tuesday after the first Monday in November in 1908, and every fourth year thereafter.

I call your attention to Section 417 of the Code of Alabama, and a part of Sections 1 and 60 of Act No. 56, H. B. 73, approved February 25, 1931 (General Act 1931, p. 73) which are as follows:

"Section 417. County officers; when elected — One coroner, county commissioners or board of revenue of whatever number composed, or courts or boards of like jurisdiction, one tax assessor, one tax collector, one county treasurer in all counties having a county treasurer, two justices of the peace and one constable for each election precinct shall be elected on the first Tuesday after the first Monday in November, 1908, and every fourth year thereafter."

(Section 1, Act No. 56, H. B. 73)

"Section 1. That a primary election, within the meaning of this Act, is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or party office. Primary elections are not compulsory. * * *"

(Section 60, Act 56, H. B. 73)

"Section 60. * * * (f) The words 'County office' or 'County officer' shall include members of County Executive Committees of political parties, and County treasurers, County Superintendent of Education, Probate Judge, County Commissioners or Members of Board of Revenue, Member of County Board of Education, Sheriffs, Tax Collectors, Justices of the Peace, Constable and like officers. * * *"

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 11, 1936

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

1. Where party operating filling station with one pump later opens a second pump, he may procure license for second pump on the

reduced amount authorized by schedule 67 of the General Revenue Act of 1935.

2. When such second pump is opened after April 1, the amount of such license is one half of the annual amount due for such second pump.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please refer to Schedule 67, page 259, Revenue Law of 1935 and render an opinion at the very earliest possible date, as to the following:

"(1) May a person who has previously purchased a privilege license to operate one gasoline pump and who wishes to later purchase a license for an additional pump at the reduced price, be permitted to do so? In other words, must he purchase the license for both the one pump and the additional pump at the same time to take advantage of the reduction in the second pump?

"(2) In case you write that he may purchase a privilege license for the second pump at a later date than that on which he purchased the first and still be allowed the reduction on same, may he purchase the license for the additional pump after April 1st, if the license for the first pump was issued before April 1st, at the half year rate? As an example, if he purchases a gasoline pump under above schedule and pays for the State \$10.00 between October 1, 1935 and April 1, 1936, may he, after April 1, 1936 buy a privilege license for an additional pump for \$3.75, that being the State's part only?"

In answer to question 1, I advise that in my opinion if the pumps are a part of the same filling station equipment, he is entitled to procure license for the second pump at the reduced price.

Answering question 2, if the license on the second pump is procured after April 1, he is entitled to the half years rate applying to such pump. While this question is not free from doubt, under the rule of strict construction of tax statutes, I am of the opinion that the foregoing is the proper construction.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936

Hon. Roy Johnson,
Tax Assessor, Jefferson County,
Room 106 Court House,
Birmingham, Alabama.

Exemptions — Property owned by charitable organization is not exempt from ad valorem taxation, although the income from said property is used for charitable purposes.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 23, 1936, which is as follows:

"The Methodist Orphanage at Selma, Alabama, has two pieces of property in Birmingham, which properties were acquired through foreclosures on mortgages. The rents from this property, they say, are used entirely for the carrying on of the Orphanage. They are claiming exemption on Section 4 of their charter.

"Please advise me if this property should be tax exempt."

In my opinion the property is not exempt from ad valorem taxation.

The Supreme Court of Alabama in construing the part of the statute exempting property used exclusively for religious worship, which also applies to property used for purposes purely charitable, held that the use of the property was the criterion in determining the exemption and not the ownership. — *State et al. v. Church of the Advent*, 208 Ala. 632, 95 So. 3. See also *Opinions of the Attorney General*, May 1, 1931, to June 30, 1931, pp. 69 and 166, Vol. 4, (Office Edition).

An Act of the Legislature approved February 5, 1891, incorporated the Methodist Orphanage, and provided by Section 4, that:

"Section 4. Be it further enacted, That the real estate in and near Summerfield, in Dallas County, on which is situated the Alabama Methodist Orphanage, and other buildings, connected therewith, and other real estate elsewhere that may here be donated to said corporation, to enable it to carry on its said Orphanage, shall be exempt from all taxation so long as said property, or the rents, income and profits thereof, are used in maintaining and carrying on said Orphanage."

Section 10 of Article XIV of the 1875 Constitution of Alabama engrafted on Acts chartering private corporations liability to alteration and revocation by the Legislature. Section 10 provides as follows:

"Section 10. The General Assembly shall have the power to alter, revoke, or amend any charter of incorporation now existing, and revocable at the ratification of this Constitution, or any that may hereafter be

created, whenever, in their opinion, it may be injurious to the citizens of the State; in such manner, however, that no injustice shall be done to the charter of more than one corporation."

Section 238 of Article XII of the 1901 Constitution of Alabama is similar to the section, supra.

In my opinion the last part of Section 4 of the Act incorporating the Orphanage, which provided that, " * * * and other real estate elsewhere that may hereafter be donated to said corporation, to enable it to carry on its said orphanage, shall be exempt from all taxation so long as said property, or the rents, income and profits thereof, are used in maintaining and carrying on said Orphanage," was expressly revoked by the 1935 Legislature of Alabama, when the Legislature passed Act No. 194, H. B. 324, approved July 10, 1935, (General Acts of 1935, p. 257), which provides in part as follows:

"Section 2. * * * all property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided, however, property, real or personal owned by any educational, religious or charitable institution, society or corporation, let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for educational, religious or charitable purposes; * * *"

"Section 374. The exemptions from ad valorem taxation granted in this Act are hereby declared to be exclusive and any laws or parts of laws, general, special or local granting or attempting to grant any exemption from ad valorem taxation, except as in this Act provided, are hereby specifically repealed."

See the case of State of Alabama v. Alabama Bible Society, 134 Ala. p. 632, 32 So. p. 1011.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936

Hon. Frank M. Johnson,
Probate Judge of Winston County,
Double Springs, Alabama.

Registration — Voters' names entered at illegal registration should be purged as prescribed by law.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of May 14th, 1936 in which you request my opinion as follows:

"The Commissioners Court called the Board of Registration together on the 13th day of April, 1936, under an Act of the 1935 Session of Legislature, which Act was not intended for the smaller Counties. This Act including only Jefferson County, the State will not pay for this ten day session of Registering voters.

"The Board of Registrars being called together on a date which the State cannot pay for, and a date which is not lawful, will the persons registered on that meeting of the Board, be legal voters, or should their names be erased from the Poll list, or should the Board of Registrars meet and strike their names from the Poll List?"

In reply, I wish to advise that in my opinion any illegal registration is void, and the voter's name should be purged from the list of qualified voters as prescribed by law in this connection. I wish to refer you to H. B. 171-Waldrep, approved April 21, 1936 which provides for the dates of the meetings of the Board of Registrars of your county and the purposes thereof.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936

Hon. N. P. Tompkins,
Judge of Probate,
Tuscumbia, Alabama.

1. Licenses due by construction companies and contractors by Schedule 42 of Section 348, Acts 1935, p. 455 are not subject to half-year license provisions of Section 368, Acts 1935, p. 564.

2. When contractor obtains proper license in regard to orders or contracts accepted in one license year, he may actually complete work thereunder in later year without additional license in regard to those contracts.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of May 23, 1936, which is as follows:

"Please advise me whether a license can be issued after April 1st for a half year under Schedule 42 of Section 343 of the Revenue Act of 1935.

That is whether the price to be charged for the license should be half the amount of the annual license under this Schedule.

"Please also advise me whether a Contractor who has procured a license under this Schedule 42 and who does not complete the contract during the license year may complete such contract after the license year expires without procuring a new license for the new tax year on the same contract.

"I would greatly appreciate a ruling from you on these two questions at your earliest convenience."

The license required of construction companies or contractors by Schedule 42 of Section 348 of the 1935 Revenue Act (Acts 1935, p. 455) is graduated according to the gross amount of "all orders or contracts accepted" during each year commencing on October 1st. You will also observe that this Schedule further provides:

" * * * ; and when such contractor shall have obtained a license for any year for which he has paid a license tax of less than the maximum above prescribed, he shall not accept any contract or contracts during such year, the aggregate amount of which exceeds the maximum amount for which the license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license."

By these clear and positive provisions the license required of construction companies and contractors by said Schedule 42 of Section 348 is removed from the half-year license payments contemplated in Section 368 (Acts 1935, p. 564, wherein, among other things it is provided:

"Section 348. Unless otherwise provided, if any business licensed by this Act shall commence after the first day of April in any year, the amount of the license or privilege tax shall be one-half the year's license or privilege tax. In all other cases the license shall be taken out for the full term of one year, unless a shorter term is fixed by the provisions of this Act."

Answering your second question, it is my opinion that since the license is graduated and fixed according to the gross aggregate amount of all contracts or orders accepted" during the license year, where a contractor has paid his proper license with regard to all such contracts or orders accepted during the license year, he may thereafter complete the work thereunder in a later year without thereby becoming liable for an additional license in regard to these particular contracts.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Fees — Probate Judges do not have to collect a fee for noting the change of ownership of automobile tags on the license record, as there is no law authorizing said fee.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of June 5, 1936, in which you state:

"I am informed that other Probate Judges are charging a fee for recording the change of ownership of automobile tags on the license record. I have not been charging this fee and I would like to have an opinion from you as to whether I have to collect a fee for this service.

In my opinion your question should be answered in the negative. There is no law authorizing a fee for noting the change of ownership of automobile tags on the license record.

An officer claiming a fee must point to specific authority giving him such fee. — **Quarterly Report of the Attorney General Vol. I p. 222.**

I refer you to Section 7255 of the 1923 Code of Alabama, which is as follows:

"7255. No fee charged unless expressly authorized. — The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936

Hon. Henry S. Long, Pres.,
State Tax Commission,
Capitol.

Attention Mr. Harry Simon.

License — Cotton warehouses — Schedule 152 of the Revenue Bill of 1935 computed on total number of bales received during calendar year.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of April 20, 1936, in which you request my opinion with reference to Schedule 152 as follows:

"The license levied by this Schedule is computed on the number of bales stored in the preceding calendar year.

"Your opinion is requested as to whether or not this license is computed on the number of bales received at such warehouse during such calendar year, or,

"If the license is computed on the maximum number of bales in the warehouse at any time during the preceding calendar year."

In my opinion the license imposed upon cotton warehouses is computed on the total number of bales of cotton received at such warehouse during the calendar year.

The Schedule in question provides in part as follows:

"152. Each person operating a warehouse or yard for the storage of cotton for compensation shall pay a license tax to the State as follows: Every such warehouse storing not more than five thousand (5,000) bales in the preceding calendar year, twenty dollars (\$20.00); * * * "

The language of the Schedule, *supra*, is clear in stating that every warehouse "storing" bales of cotton "in the preceding calendar year" shall pay a license. Nowhere can it be found that the license mentioned is to be computed on the "maximum number of bales in the warehouse at any one time."

Cf. Opinion of Attorney General, Biennial Report, 1926-1928, page 215. Opinion Attorney General, Biennial Report, 1930-1932, page 1048.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. R. A. Leath,
Sheriff, Etowah County,
Gadsden, Alabama.

June 16, 1936

Under Senate Bill 64 — Starnes, approved April 21, 1936, Judges of the Circuit Courts of Alabama are given the power to appoint court bailiffs, but such bailiffs are under the direction of the sheriff and must obey his orders.

It is the sheriff's business to see to the safe-keeping of all prisoners while being tried or in attendance on the Court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 26, 1936, in which you request my opinion as follows:

"Who is responsible for the prisoners while they are being tried in Circuit Court, under the S-64-Starnes Bill giving the Circuit Judges the power and authority to appoint the Court Bailiffs the Sheriff or the Bailiffs?"

The appointment of court bailiffs does not in any way relieve the sheriff of the duty placed on him by law. I call your attention to Section 10189, Code of Alabama, 1923, where it says among other things:

"To attend upon the circuit courts held in his county, when in session, and the courts of probate, and the county courts, and the court of county commissioners, when required by the judge of probate, and to obey the lawful orders and directions of such courts."

It is true the Act you refer to gives the Judge the power to appoint court bailiffs, but when this is done, then they come under the direction of the sheriff and must obey his instructions, as he is in fact in charge of the Court so far as carrying out the orders of the Court are concerned.

All prisoners are in the charge and custody of the sheriff of the county and it is his duty to see that such prisoners do not escape when in court or out of court. I call your attention to Chapter 128, Sections 4004-4018 of the Code of Alabama, 1928.

See 5th Enc. Dig. 660, et seq.

Pentecost v. State, 107 Ala. 81, 18 So. 146.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 17, 1936

Hon. T. D. Woodham,
Tax Assessor, Dale County,
Ozark, Alabama.

Taxation — Exemptions. Courts of County Commissioners, municipal authorities, and the State Tax Commission not authorized to make exemptions authorized under Section 3 of the Revenue Act

of 1936 to any factory, mill or plant already erected at the time said Act became effective.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Cowikee Mills have purchased the plant and equipment formerly belonging to the Dale Cotton Mills of this city. The Cowikee Mills are now using the old buildings formerly used by the Dale Cotton Mills. As an inducement to the new company in operating the cotton mill, in Ozark, the City of Ozark and Dale County, by joint resolution adopted May 10, 1935, have exempted the property of the Cowikee mills from the payment of ad valorem taxes for a period of five years. I enclose a copy of the resolution for your information.

"Please advise me if the City of Ozark and Dale County have authority to exempt the Cowikee Mills from ad valorem taxes."

The facts stated in your letter are incomplete, but I infer that the Dale County Mills have heretofore been operating and subject to taxation and that the same property or assets were sold in the Cowikee Mills. You do not state whether the Cowikee Mills have made any additions to the property.

Section 3 of the 1935 Revenue Act authorizes the exemption of certain named factories or extension thereto by the Court of County Commissioners, the municipal authorities and the State Tax Commission "for a period not exceeding ten years from the date of the incorporation or organization of such factories or plants, if incorporated and organized under the laws of the State of Alabama, or for a period not exceeding ten years from the date of being granted permission to do business in the State of Alabama, if a foreign corporation or from the date of completion of such plant or factory, or from the date of the completion of such additional or extension thereof."

The Section however contains this further provision:

"Provided that the period of the foregoing exemptions shall not be extended, renewed or in any way added thereto, because of any reincorporation or reorganization of the original corporation, or the sale of the assets to a different person, firm or corporation."

And likewise this provision:

"Provided said exemption and remission shall not apply to property which at the time of the passage of this Act, constitutes any factory, mill or plant, already erected or constructed within the State at the time of the passage of this Act."

It therefore appears that the Court was without power to grant such exemption as to any buildings erected at the time of the effective date of the Act, to wit, Oct. 1, 1935.

If there had been an extension or improvement to the value of \$50,000 or over during a twelve month period, since the Act became effective then, the above named authorities may grant such exemption.

As to that part of the resolution attempting to remit taxes already due, such action is violative of Section 100 of the Constitution.

Union Bank & Trust Co. v. Phelps, 228 Ala. 236, 153 So. 644.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 18, 1936

Hon. J. Lee Smith,
Probate Judge,
Chilton County,
Clanton, Alabama.

Taxation — Board of Review — Members not entitled to mileage in attending the sessions of the Board.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Will you please advise me whether or not the Members of the Board of Review are entitled to mileage and I presume that if you so hold them they would be entitled to it at each of the adjourned sessions of the Board?"

In my opinion members of the Board of Review are not entitled to mileage in going to and returning from the sessions of the Board.

Section 70 of the Revenue Act of 1935 provides:

"The members of the courts of county commissioners or boards of revenue, or courts of like jurisdiction of the several counties of the State shall receive, as members of the Board of Review, the same per diem and be paid in the same manner as when sitting at a regular term of such court of county commissioners or board of revenue when such compensation is fixed on a per diem basis, which compensation shall be in

addition to that as now fixed by law, except in counties where such officials are paid a salary."

Section 6771 of the Code of 1923, relating to the regular compensation of members of the commissioners Court, while engaged as such, provides for both per diem and mileage. It is reasonable to assume that, had the Legislature intended by Section 70 of the Revenue Act to provide mileage for members of the Court while engaged as members of the Board of Review, it would have said so in so many words. Before a public officer is entitled to claim any allowance, compensation or fee, he must be able to point to a specific provision of law authorizing the same. Inasmuch as Section 70, supra, does not purport to authorize mileage for attendance upon meeting of the Board of Review, it is my opinion that none is allowable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Capitol.

When a convict is paroled by the Board of Pardons on account of his having served his minimum sentence, he is paroled on good behavior and may be returned to the penitentiary by revocation of his parole to serve out the full term.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 9, 1936, in which you request my opinion as follows:

"Will you please give me an opinion on the following question:

"When a man has been discharged on his short time and violates the law before his long time has expired, can the Governor and Associate Members of the Board bring him back and make him serve his long time on the case he was discharged from?"

In answering your request, I call your attention to Article 2, Indeterminate Sentence Law, Sections 5267-5276, Code of Alabama, 1923, both inclusive and especially do I call your attention to Sections 5270 and 5271 which are as follows:

"5270. Parole of prisoner after minimum sentence served. — Whenever the minimum term of sentence of any person imprisoned in the state penitentiary shall have expired, the warden of such prison where

such person is imprisoned shall send the record of such prisoner to the board of pardons, and if, from such record, the board of pardons is reasonably satisfied that such person will remain at liberty without violating the law, then said board of pardons shall authorize the release of such person upon parole, and such person shall thereupon be allowed to go upon parole outside of the prison walls upon such terms and conditions as the board may prescribe but while on parole, such person shall be in the legal custody and under the control of the warden of the penitentiary until the expiration of the maximum time specified in his sentence, as hereinbefore provided, or until his pardon by the governor."

"5271. Arrest of prisoner on parole; when made. — If the wardens of the prison from which such prisoner was paroled or the board of pardons, or any member thereof shall have cause to believe that the person so on parole has violated his parole or has lapsed into criminal ways, then such warden or any member of the board of pardons may issue a warrant for the arrest of such prisoner at any time prior to the expiration of the maximum period for which such person may have been confined in the penitentiary, which time shall be specified in the warrant."

Section 5270, supra, provides that when a convict is sent to the penitentiary on an Indeterminate sentence if his record while in the penitentiary warrants it, he may be PAROLED by the Board of Pardons at the expiration of his minimum sentence. I do not take this to mean that he must be paroled but after due consideration may be paroled. Webster defines parole as pertaining to convicts to mean: "to release a convict on good behavior," the paroling of a convict at the end of his minimum sentence simply a parole during good behavior just as much so as if he had been paroled before the expiration of his minimum term. Under Section 5271, supra, if the convict fails to obey the laws of the State, such parole may be revoked and his rearrest ordered and the convict returned to the penitentiary to serve the balance of his term.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. Howell Turner,
Secretary of State,
Capitol.

Elections—Acts 1935, page 894 (which amends Code of 1923, Section 462, as amended by Acts of 1935, page 237) requires that candidates for county and municipal offices, nominated by party machinery shall file or cause to be filed certificates of nomination not more than sixty days nor less than twenty days prior to the general election; and that all candidates nominated by petition of electors shall file declaration of candidacy, and that the nominating petition of electors shall be filed, prior to the date of the primary election.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of May 20, 1936, requesting my opinion as follows:

"You will find herewith enclosed copy of Act No. 424, H. 905, passed at the 1935 regular session of the Legislature. I call your attention to Section 462 of the Code of 1923 in force prior to the passage of this amendment.

"The amendments to Section 462 are the following:

"The judge of probate shall also cause to be printed upon the ballots the name of any qualified elector who has been requested to be a candidate for any state, county, municipal or federal office by written petition signed, in case of a candidate for a state or federal office, by at least three hundred electors, and in case of a county or municipal office, by at least twenty-five electors qualified to vote in election, to fill said office; when such petition has been filed with him **before the first Tuesday in May in the year in which a state wide primary election is held.** Section 462 provided that such petition be filed 'not more than sixty days nor less than twenty days previous to the election.'

"In the next sentence the amendment provides the certificate of nomination or petition shall be filed with the Secretary of State 'before the first Tuesday in May in the year in which a state-wide primary election is held' instead of 'not less than thirty days before the day of election' as per the Code of 1923, Section 462.

"You will also note in the General Acts of 1935, on page 238, Section 462 was amended. This Act is identical to Section 462 of the Code with the exception of the last sentence which reads, and which is an addition: 'Provided, however, that the judges of probate of the several counties in this State are hereby prohibited from causing to be printed upon the ballots to be used in their respective counties the name of any candidate for any state, county or federal office who had not filed his or her declaration to become such a candidate before the first Tuesday in May in the year in which a state-wide primary election is held.'

"We called the attention of the author of the bill to the fact that this provision would necessitate every candidate for every party filing his declaration before the primary, whereas the author of the bill had advised it was his intention for his amendment to Section 462 to provide for **independent** candidates in the general election filing their intention to become such candidates before the May primary. The bill was rewritten and introduced with our suggestion that instead of the judge of probate being prohibited from causing to be printed upon the ballots the name of **any candidate**, it read 'any independent candidate.' However, when the bill was finally passed the second time we found the above additions embodied therein relating to the petition and certificate of nomination, as the case may be, being filed before the first Tuesday in May.

"As the act provides now it appears the certificate of nomination of every candidate of every party shall be filed with the Secretary of State before the first Tuesday in May.

"Please advise whether or not the amendment to this act applies to candidates of all parties or only to independent candidates. I would further call your attention to the fact that it is impossible for a certificate of nomination of candidates to be filed before the date of the primary, convention or caucus, unless held before the first Tuesday in May, and the certificate of nomination of the Democratic party, of course, cannot be filed before the Democratic primary. Thus it seems to us that this act could not apply to party nominations, as amended. It further seems to us it was the sole intention of the Legislature that the provisions of this act only apply to independent candidates, in relation to the amendment. In the past we have received within the time prescribed by Section 462 certificates of nomination of other political parties. Since only independent candidates have complied with this act by filing prior to the first Tuesday in May, it seems such other political parties have not so construed this section to mean the certificate of nomination should be filed before the first Tuesday in May.

"Inasmuch as our action in accepting certificates of nomination will be based upon your opinion, I will appreciate an early reply."

In my opinion, Acts 1935, page 694 (which is a substitute for Code of 1923, Section 462, as amended by Acts 1935, page 237) is reasonably clear and workable. By the last enactment, the Legislature evidently intended to lay down a different rule to govern each of the two classes of nominees dealt with, namely, (1) those nominated as candidates for county or municipal offices by the caucus, convention, primary election, etc. of a political party; and (2) those nominated as candidates for any office, Federal, State, District, County or Municipal by a petition of electors. This latter class is commonly understood in Alabama to mean "independent candidates." Of course, as to candidates for Federal, State or District offices nominated by party machinery, certification to the Secretary of State is governed by Section 647 and certification by that official to the several Probate Judges is governed by Section 648 of the Code of 1923.

The last Act simply provides that, as to those nominated for county or municipal offices, by party machinery, certificate of nomination shall be filed not more than sixty days nor less than twenty days prior to the **general** election; whereas, as to those nominated for any offices, whether Federal, State, County, etc. by petition of electors (so-called "independents") the petition shall be filed and the candidate shall file his declaration of candidacy prior to the date of the primary election.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Elections—Registration.

Boards of Registrars required to meet and remain in session five days for registering voters, in all counties of State except Jefferson, Mobile and Montgomery, on first Monday in July of each year.

1. Meetings of Board of Registrars for registering voters, controlled by terms of House Bill 171-Waldrep, approved April 21, 1936.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"I would like for you to examine an Act of the Special Session of the Legislature, approved April 21, 1936, which act amended an Act of the Regular 1935 Session which was approved Sept. 14, 1935, and found on page 1120 of the Acts of 1935.

"I want to know if the Acts above referred to, and as amended, authorize the Board of Registrars of all counties in the state, except Jefferson, Montgomery and Mobile to hold a five day session, beginning on the 1st Monday in July.

"Please give me an advisory opinion at once in order that the Board may give notice of the meeting, if same is authorized and legal."

In reply, I wish to advise that in my opinion, House Bill 171-Waldrep, approved April 21, 1936, controls the answer to your inquiry. This act provides in part as follows:

"In addition to the regular registration provided in this article, the courts of county commissioners, boards of revenue, county commissioners, or other courts of like jurisdiction of the several counties may make an order requiring the books of registration to be opened for ten working days during the month of January, 1921, and each two years thereafter, and it shall be mandatory for the board of registrars to meet on the first Monday in July, 1936, and each two years thereafter and remain in session at each of said meetings five days for the purpose of registering voters, and the board shall meet on the first Monday in July, 1937, and each two years thereafter and shall remain in session at each of said meetings for five days for the purpose of registering persons entitled to register.***"

This provision of this Act, in my judgment, applies to every county in the State of Alabama, except Jefferson, Mobile and Montgomery, which are governed by special provisions of the above named Act.

No August registration in all counties of the State is provided for in this Act, and therefore none may legally be held at this time.

Section 3 of the above named Act provides as follows:

"That all laws and parts of laws, except as otherwise provided herein, in conflict with the provisions of this Act, are hereby expressly repealed."

It will be seen therefore, that the provisions of this Act must control.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 22, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

1. Where an item of costs in a case where the defendant is sentenced to the penitentiary, has been omitted, either through error or inadvertently, it may later on be paid by the State, provided the amount of the costs omitted and the amount originally paid, does not exceed \$250.00, as \$250.00 is all the costs the State will pay in a penitentiary case under Section 3668, Code of Alabama, 1923.

2. However, the rule would be different where a defendant was convicted and sentenced to hard labor for the County. The State will only pay just such costs as the defendant is sentenced for and no more. Misdemeanor cases differ from felony cases as to costs, for the reason that in felony cases the defendant is not sentenced for costs.

3. The Clerk may issue execution in penitentiary cases for costs, provided at the time the defendant was sentenced there was a valid judgment entered up against the defendant for costs, otherwise, there would be no basis for execution.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 22, 1936, in which you request my opinion as follows:

"Under date of July 1, 1930, County Court Case No. 7533 was filed. The defendant in said case was charged with a felony and the Judge of Probate acting as ex-officio Judge of the County Court and sitting as a magistrate waived to the action of the Grand Jury. The Grand Jury returned a true bill and said defendant was convicted and sent to the penitentiary. In making our cost bill covering the Clerk did not include the preliminary costs as follows:

"Justice of the Peace		
Complaints	.25	
Warrants	.50	
		.75
"Sheriff		
Arrest in felony case.....	4.00	
Approving bond	1.00	5.00
		5.75
"Amount allowed by Convict Dept. for preliminary"		5.00

"An examination of records of Clerk is now being made and opinion is requested if this preliminary charge of \$5.00 should be paid by Convict Department at this late date.

"Under date of July 1, 1930 Circuit Court Case No. 7605 was filed. The defendant in said case was charged with a felony and the Judge of Probate waived to the action of the Grand Jury and that body returned true bill. Indictment was amended in Circuit Court and defendant was convicted and sent to Hard Labor. Clerk failed to include the same preliminary costs as shown above and we desire opinion as to whether the Convict Department is liable for payment at this late date or not.

"Under date of October 1, 1930 a defendant is convicted and sent to penitentiary. The Clerk of Circuit Court neglected to issue execution for costs in said case. May Clerk, at this late date, issue said execution and then file claim for the costs not paid by Convict Department in said case from Fine and Forfeiture Fund?"

I note in your request you say "the judge of the County Court waived action to the grand jury." I am sure what you are attempting to say is that the defendant waived action to the grand jury, as the Judge had no such right or power—only the defendant can do this.

It is my opinion the State in penitentiary cases may even yet pay this preliminary costs provided the costs as originally collected from the State, together with the costs which you now seek to collect, do not go beyond \$250.00, as \$250.00 is all the costs the State will pay in any felony or penitentiary case. See Section 3668, Code of Alabama, 1923, which is as follows:

"Costs shall not exceed two hundred and fifty dollars.—The whole costs paid in any one case shall not exceed two hundred and fifty dollars."

I think this course is but fair and right, where there has been an honest mistake by the Clerk and an item of costs was inadvertently or through error omitted from the bill originally submitted to the State, which at the time was a proper item to be paid by the State. The State should pay the same provided it is not barred by the statute.

In answering your second request, the rule here is different; in hard labor cases, defendant is sentenced to a certain number of days to work out the costs, and if he works out the costs he is sentenced for, and works out the fine at so much per day, he goes free, and should the Clerk fail to enter any item of costs in calculating the time that would have been required to work it out, and the defendant was sentenced to hard labor and this item the Clerk omitted was not taken into account in figuring the costs, the State pays only such costs as it had had an opportunity to have worked out by the convict, and if it was not included in the sentence, then, of course, the State would not get the benefit of defendant's labor for this item and would not, after sentence, be under obligations to pay the same, even though it was a proper item to be included at the time the defendant was sentenced.

My answer to your third inquiry is in the affirmative, provided at the time the defendant was convicted, there was entered up against him, a valid judgment for costs and the same has been kept alive by issuing executions on same as required by law. When I mean by "valid judgment" is that the Judge entered upon his bench notes a requirement for judgment for costs, and the Clerk, in obedience to these bench notes, followed the same up by writing a civil judgment for the costs incident to the prosecution.

Of course, the judgments for costs in criminal cases become a civil procedure as to issuing executions and the mode of collection.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 23, 1936.

Hon. Henry S. Long, Chairman,
State Tax Commission,
Capitol.

Attention: Hon. Harry Simon, Chief Clerk.

Licenses—Stores—

1. Persons storing their merchandise in public warehouses in this State and delivering from such warehouse by order signed by salesman or other representatives are liable for store license.

2. Persons who consign merchandise to merchants who sell the same as a part of their general stock, merely accounting to the consignor, are not liable for store license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 23rd, in which you state:

"Your opinion is requested as to whether or not a person operating in this State in the manner as herein outlined, is subject to the payment of the chain store tax—Schedule 155, Article 13, Chapter 3, Acts of 1935.

"1. Persons who do not own nor maintain a store or establishment of any kind in Alabama, but merely store their merchandise in public warehouse in this State and from such stock of merchandise deliveries are made upon an order signed by a salesman or representative of such person or by an order from their office.

"2. Would persons who consigned merchandise to merchants in Alabama be subject to the chain store license?"

In reply to question 1, I advise that Schedule 155.7 defines a store as follows: "The term 'store' as used in this Schedule shall be considered to mean and include any store or stores or any merchantile establishment or establishments *** in which goods, wares and merchandise of any kind are sold either at wholesale or retail."

From the facts stated in your first question, it would appear that sales are made from such warehouses and, in my judgment, the persons who deposit their goods in such warehouses and make sales therefrom are liable for store license.

In answer to question 2, I assume that when you refer to consigned merchandise, you mean that such goods are handled in the manner usually customary, namely, that Manufacturer A consigns to Retailer B certain goods but Retailer B places them in his stock and so far as the public is concerned, sells them as a part of his stock of goods and A has nothing to do with the sale and disposition or control of them other than retention of title and to require an accounting from Retailer B.

If I am correct in these assumptions, B is not conducting the store and is not liable for store license in my judgment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. T. W. Shields, Sheriff,
Marengo County,
Linden, Alabama.

June 24, 1936.

Where a defendant is being arrested in one County of the State charged with an offense committed in a different county, and in

making the arrest, the defendant is wounded and carried to the hospital for treatment, the county from which the warrant of arrest emanated would be responsible for the hospital bill.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 4, 1936, in which you request my opinion as follows:

"I am writing for an opinion on the following statement of facts:

"An indictment charging the offense of Grand Larceny was found by the Grand Jury of Washington County at its Spring Term of Court 1930 against A. L. Stokes. Capias under this indictment was sent to me by the Sheriff of Washington County for execution.

"When my Deputy and I found Mr. Stokes, he resisted arrest and it became necessary to shoot him. He ran toward the house after we had ordered him to surrender, saying: 'Wait till I get my gun and I will fix you.' Fearing that he had a rifle at the house, I ordered my Deputy to shoot. After firing three shots, the fourth shot him in the leg.

"As a result of the shot, it was necessary to take Mr. Stokes to our County Jail Physician, who advised us that it would be necessary to take him to Selma to the hospital immediately. We took Mr. Stokes to the hospital, and the next day the Probate Judge gave us an order to keep him in the hospital, until he was able to be carried to jail. The Sheriff of Washington County has placed guards over him.

"I am informed that this County will probably decline to pay for the treatment of this prisoner, thinking that it is Washington County's duty to pay all expenses.

"Will you please give me a written opinion as to which County should pay for the hospitalization and treatment of the prisoner. There seems to be some doubt in the minds of some County officials here, on the ground that the prisoner was not ill before he was arrested, and because it was necessary to use such force as to injure him in making the arrest, the County would not be liable."

In answering your request above, I call your attention to an opinion of this office written October 6, 1930 to the Sheriff of Dallas County. Biennial Report of Attorney General 1930-1932, page 3. This opinion answers your question as to the liability of the County for hospital services, in a case on all fours with the one you have here and I am extending it in order to answer your further question as to which County is liable for the bill.

It is my opinion the County of Washington is chargeable with the hospitalization, as the defendant is a prisoner of Washington County, and not

Marengo County. It is true the defendant was wounded by the officers of Marengo County while attempting to arrest him, but this was on a warrant from Washington County, charging an offense committed in Washington County and one for which he would have to be tried in Washington County and not Marengo. It is true it was the duty of the Sheriff of Marengo County to make the arrest for the Washington authorities, but in my opinion, in doing so, he did not make his county responsible for what happened in attempting to make the arrest. No more than if the Sheriff of Washington County had pursued the defendant into Marengo County in attempting to arrest him, had to wound him. The act of the Sheriff of Marengo County was merely courtesy extended to the County of Washington.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. L. Kaufman, Chairman,
Unemployment Compensation Commission,
Capitol.

Unemployment Insurance—Employee specifically exempted, because of type of employment, from the operation of the Acts of 1935 p. 950 held not permitted to elect to become subject to the Act.

1. Employer specifically exempted held not permitted by election to become subject to the Act or to bring exempted employees under operation of the Acts.

2. Contributions by employees governed by Section 4 (d) of Senate Bill 125-Stephens, Special Session of 1936.

(a) Held employees entitled to refund of contributions withheld from wages by employers prior to May 1, 1936.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of February 29, 1936 and your letter of May 8, 1936, requesting my opinion respectively as follows:

"(1) Under the Alabama Unemployment Compensation Act (House Bill No. 447) can an employee who is specifically exempted from the operation of the Act, under Section 2 (g), by election become subject to the Act?

"(2) Whether an employer of persons specifically exempted can by electing to become subject to the Act, bring his exempted employees under the operation of the Act?

"(3) Under Section 2 (f), it is set out that 'such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January 1st, of the calendar year in which such employment occurs.' Section 4 (d), states 'each employee shall contribute to the fund one per centum of his wages.' Is it possible for this Commission, by a rule or regulation, to say that even though an employer's status is retroactive as of January 1st, the employees will be required to make payment of contributions only from the time it is definitely determined that his employer is subject to the Act? Also, under Section 4 (d), would it be legal for this Commission to rule that contributions by employees shall not begin until January 1, 1937, this for the reason that no time is specified when the employee's contributions shall begin?

"If question (3) can be answered in the affirmative it will be of material benefit to the Commission in the working out of this Unemployment Compensation Act. It would also meet with the hearty approval of the Social Security Commission.

"The Alabama Unemployment Compensation Act, approved by Governor Graves September 14, 1935, provided that (Section 4 (d)): 'each employee shall contribute to the fund (1%) one per centum of his wages.'

"On April 21, 1936, Governor Graves approved Senate Bill 125. This Senate Bill 125, amended Section 4 (d) of the Act to read as follows: 'Each employee shall contribute to the fund (1%) one per centum of his wages earned after May 1, 1936', etc.

"The Alabama Unemployment Compensation Commission has never called for nor collected any contributions from employees or employers. Numerous employers write and inquire whether they should refund to their employees deductions withheld from wages earned from their employees prior to May 1, 1936.

"There were many long distance telephone calls to the Commission, the morning after this amendment was signed, inquiring whether refunds could be made. I advised them, in accordance with the enclosed bulletin which was sent out, that so far as the Commission was concerned refunds could be made.

"Should this Commission inform such employers so inquiring, that they can refund to their employees deductions withheld on wages earned before May 1, 1936?"

Since the Unemployment Compensation Law (Acts 1935, p. 950) was amended by an Act approved April 21, 1936, Special Session of the Legislature, I have incorporated both requests into the instant opinion and have thereby eliminated question three of your letter of February 29th, which question appears in substance in your letter of May 8th.

I have numbered all of your questions contained in both letters in consecutive order.

In reply to your question numbered 1, I wish to advise that in my opinion same should be answered in the negative. Section 2 (g) of the Acts of 1935 p. 950 generally known as the Unemployment Compensation Law as amended by Senate Bill 125—Stephens, approved April 21, 1936, provides in part as follows:

"The term 'employment' shall not apply to: (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed by an officer, bar pilot or member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States (6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as the Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as Solicitors or agents for Insurance Companies. (7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions; (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

You will note that the types of employment here named are specifically excluded by the terms of the law itself. Subsection (e) of Section 2 of this Act defines employee in the following language:

"'Employee' means any person employed by an employer subject to this act and in employment subject to this act."

Construing these two subdivisions together the legislative intent is clear that a person who is employed in those occupations which are specifically exempted from the operation of the Act cannot become subject to the terms of the Act by election.

In my judgment your second question must be answered conditionally. The law contemplates two different types of exempted employers. Section 2 (f) defines employer in part as follows:

"'Employer' means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs."

The last sentence in the above subsection (f) is as follows:

"Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto, upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission."

When this sentence is construed with the remainder of this section, it is readily seen that the legislature intended to provide a means for employers, who seek to bring the benefits of this law to themselves and to their employees, to elect in accordance with terms of the law, to subject themselves and their employees thereto, even though they do not employ the required number of employees.

It must be presumed, however, that any specifically exempted employer may not elect to come under the terms of this law. Section 2 (g) as amended, referred to supra, specifically exempts from the terms of the law certain occupations in which employers are not given the privilege of electing to come within the terms of the Act.

In my opinion your third question should be answered in the affirmative. You will note that the Act of 1935, p. 950, provides for contributions of employees in the following language: (Acts 1935, p. 956)

"(d) Contributions by Employees. Each employee shall contribute one per centum of his wages."

No date as of which the employee contribution shall be paid is specified in the terms of the 1935 Act. In my judgment the 1935 Act, supra, sets the amount of the contributions due by the employees, but because of its failure to specify a definite date for payment of these contributions, the same did not become due and payable under the said 1935 Act.

Senate Bill 125—Stephens approved April 21, 1936, in my judgment, cures this defect as of or subsequent to May 1, 1936, as follows:

"Section 4 (d). 'Contributions by Employees'. Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936, and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules."

Premises considered it is my opinion that employers withholding any deductions from employees' wages as of dates prior to May 1, 1936, should refund to said employee.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. E. Corbin,
Deputy Circuit Clerk,
Marshall County,
Albertville, Alabama.

All fines are now payable in money only, except as may be otherwise provided.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 13, 1936, in which you request my opinion as follows:

"Please advise me whether or not, I, as Deputy Clerk of the Circuit Court, could accept certified Claims in payment of fines. Mr. A. made bond here for a \$200.00 fine, paid the cost in Money and upon the issuance of an execution for the fine, he tenders \$200.00 worth of Certified Forfeiture Claims, signed by the Judge, but there is no money in the fine and forfeiture fund, and these Certificates were certified in 1933."

You cannot accept script, in other words, state witness certificates, in payment of fines. I call your attention to Section 4038, Code of Alabama, 1923, which is as follows:

"4038. Fines to go to County, and Judgment accordingly.—All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particularly county."

Quarterly Report of Attorney General Oct.-Dec. 1935, p. 37.

Quarterly Report of Attorney General Oct.-Dec. 1935, p. 116.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. F. Posey,
Judge of Probate,
Autauga County,
Prattville, Alabama.

Elections—Judge of Probate has no authority to transfer a voter's name from one precinct to another within the county unless requested

to do so by said voter, such transferring being within the province of the Board of Registrars.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 21, 1936, in which you present the following inquiry:

"When a qualified voter moves from one precinct to another in the County, does the Judge of Probate have the right and is it his duty to transfer this voter from one precinct to another, (provided of course this voter has lived in the precinct to which he moved more than three months prior to the election)?"

In answer to your inquiry, I am of the opinion that the Judge of Probate does not have authority to transfer a voter's name from one precinct to another unless requested to do so by the voter, such being a matter exclusively within the province of the Board of Registrars.

This office has heretofore held that where persons are duly registered as electors by the Board of Registrars, the Judge of Probate is without authority to strike the names of such persons from the list of registered voters, even though affirmative irregularities in the matter of residence qualifications are shown.—Opinion of Attorney General to Judge of Probate, Montgomery County, March 13, 1935, and cases cited therein.

Reasoning by analogy, it is my opinion that the Judge of Probate does not have the authority to transfer the name of the voter from one precinct to another within the county even though affirmative irregularities in the matter of residence qualifications are shown. Such is a matter within the exclusive province of the Board of Registrars. A voter is not required to register on changing his residence from one precinct to another in the same county.—Section 385, Code of 1923; *Sellers v. Commissioners Court*, 165 Ala. 338, 51 So. 795.

In this connection, I wish to call your attention to the fact that one is entitled to vote only in the precinct of his electoral residence, although he may be registered in another precinct. Section 488 of the Code of 1923, provides as follows:

"488. Elector must vote in county and precinct of residence.—At all elections by the people of this state the electors must vote in the county and precinct of his residence and nowhere else, and must have registered as provided in this chapter; and if any elector attempts to vote in any precinct other than that of his residence, his vote must be rejected, except as provided in section 361 (290) of this Code."

When a voter whose name appears on the list of qualified voters as residing in one election precinct but who has removed to another and has resided therein for a period of three months or more he should vote in the latter precinct. His name not being on the qualified list, he is subject to challenge

and it is the duty of the election officers to challenge and require the challenged voter's oath to be taken before such party may vote.

However, under Section 488 above quoted he has no right to vote except in the precinct of his residence and it is the duty of the election officials to reject any person attempting to vote in a precinct other than that of his residence even though his name appears on the qualified list of a precinct other than that of his actual residence.

Any doubt as to the proper authority to make the transfer is in my judgment removed by Act 460 approved Sept. 13, 1935 (Acts 1935, p. 989) amending Section 392 of the Code, specifically requiring the Board of Registrars to transfer the name of an elector on the registration list to the precinct of his residence.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. F. Aldridge,
Solicitor, Green County,
Eutaw, Alabama.

Schedule 12 of the Revenue Bill of 1935 relative to dealers in automobiles, motor cars, or other self propelled vehicles held to include dealers in self propelled "farm tractors."

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 16, 1936, in which you request my opinion as follows:

"Schedule 12, page 445 of the Revenue Act of 1935, provides as follows:

"Upon each and every agent of and/or dealer in, and upon every person soliciting orders for the sale or purchase of automobiles, motor cars, or other self propelled vehicles, except motorcycles."

"The Tax Department is construing this section to include farm tractors. I do not so construe it, and it is my opinion that the farm tractor is not a vehicle within the meaning of this statute. I also think that a reading of the entire section bears out this contention.

"I wish you would advise me in reference to this matter, as I am going to be called upon by the License Inspector to construe this section, and I want your opinion in reference to the same."

In my opinion a person, etc. dealing in or taking orders for the sale of farm tractors should be cited for the license imposed by Schedule 12, p. 445 of Revenue Bill of 1935. This schedule provides in part as follows:

"Upon each and every agent for and/or dealer in, and upon every person soliciting orders for the sale or purchase of automobiles, motor cars, or other self propelled vehicles, except motorcycles, and except any person regularly employed by a said agent, of, and/or dealer in, which said agent of, or dealer in, has paid the privilege tax or license herein provided for, the following privilege or license tax shall be levied and collected, for each place of business, to-wit: etc."

You will note that the schedule provides that dealers in or persons soliciting orders for "other self propelled vehicles" shall be liable for the license along with those engaged in the similar business with regard to automobiles and motor cars.

A combined threshing machine and cleaner mounted on an axis and wheels has been held to be a "vehicle." *Vincent v. Taylor Bros.* 168 N. Y. S. 287, 288, 180 App. Div. 818. See also *Sant. v. Continental Life Ins. Co. of St. Louis, Mo.* 291, pp. 1072, 1074 (Idaho) holding that a horse drawn road grader is a "vehicle."

The Schedule in question does not purport to license the use of the farm tractor, but only the sale of such a vehicle. A consideration of Schedule 12 and in particular that provision requiring a license for dealers, etc. in "other self propelled vehicles" can lead but to the inevitable conclusion that a farm tractor, which I assume is self propelled, is a "vehicle" within the meaning of said schedule, and therefore that one who deals in this type vehicle is subject to the license imposed by said Schedule 12.

The opinion found in Biennial Report of the Attorney General 1918-1920, p. 607 being in conflict herewith is hereby overruled.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. O. L. Andrews, Clerk,
Tenth Judicial Circuit,
Birmingham, Alabama.

1. Under Section 4910, Code of Alabama 1923, if the defendant is convicted for larceny, embezzlement, etc., the item of property, the subject of the crime, are assessed (as to value) and collected as other costs.

2. Where the defendant is sentenced to the penitentiary, the Clerk should issue execution against the defendant for the portion of the costs not paid by the State under Section 3667, Code of Alabama, 1923.

3. Where defendant was convicted of a misdemeanor and appeals to the Appellate Court, the cost of the appeal cannot become a part of the sentence and execution should issue against the defendant for this cost.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 29, 1935, in which you request my opinion as follows:

"Will you please give me your opinion on the following questions:

"1. A defendant is convicted of larceny or like offense and the court or jury fixes the value of the property stolen as provided by Section 4910 of the Code of 1923. If the defendant is sentenced to the penitentiary or to hard labor for the County should the Clerk issue an execution against the defendant for the assessed value of the property?

"2. If a defendant is sentenced to the penitentiary should the Clerk issue an execution against the defendant for that portion of the costs not paid by the State under Section 3667?

"3. In Jefferson County there is a local act under which the County is not required to pay the costs where defendant is sentenced to hard labor for the County. Should the Clerk issue an execution against the defendant for the costs?

"4. Where a defendant is convicted and appeals to the Appellate Court it is my understanding that the cost accruing on appeal cannot be charged against defendant where he is sentenced to hard labor for costs, but can only be collected on execution issued against defendant. Is this correct?"

Answering your first request, I call your attention to Section 4910, Code of Alabama, 1923, which is as follows:

"Judge for Value of Stolen Property on Conviction of Larceny and Like Offenses.—When the defendant is found guilty of larceny, obtaining property under false pretenses, embezzlement, and all offenses punishable like larceny, the court, justice or jury trying the issue, unless the property has been returned or the value thereof paid to the owner, must assess the value of each article, and such assessed value shall be made an item of costs in the case, and shall be paid in like manner as the other costs taxed against the defendant, and the clerk of the court shall issue a certificate to the owner of the property for the value of such property as assessed by the court or jury. The amount of such assessed value must not be included in any bill of costs paid by the state, or for which a defendant is sentenced to hard labor."

You will note that where a defendant is charged with an offense set out in the above quoted section, it becomes the duty of the Judge, jury or justice

trying the case, to assess the value of each item of property separately, and unless the property has been returned or the value thereof has been paid to the owner, such value is made an item of costs in the case and shall be paid in like manner as other costs taxed against the defendant. But your inquiry is, if the defendant is sentenced to the penitentiary or to hard labor for the county, then how paid? If sent to the penitentiary, the State pays only such items of costs as are set out under Section 3667, Code of Alabama, 1923, and I find no provision under the Section, *supra*, for the State paying this item of costs. This being the case, in my opinion, you should issue execution against the defendant for this item, and the same rule would apply that applies in cases where the convict is sentenced to hard labor and turned over to the State under Act approved February 18, 1927, (General Acts, 1927, page 52.) But in Jefferson County, your convicts who are sentenced to hard labor are not turned over to the State but are worked by the county on the public roads. But this would make no difference, the county could not be made liable for this item of costs, that is, the assessed value of the property, the subject of the crime. This item of cost can only be collected by execution against the defendant and is not subject to be classed as cost paid by the State or county.

The statute says plainly that this item of costs shall not be included in the bill of costs paid by the State, but Jefferson County does not send her county convicts to the State, therefore, the question naturally arises, how does this law affect Jefferson County? I think it suffices to say that if the State is not required to pay, the same rule will apply to the County and this cost or damage, whichever you might term it, can only be collected as suggested above by execution against the defendant.

My answer to your second inquiry is in the affirmative. Biennial Report of Attorney General 1930-32, p. 965.

My answer to your third inquiry is in the affirmative, but only for the amount not worked out by the convict. If he has worked it all out, then you are without authority to issue execution.—Report of Attorney General 1930-32, p. 965.

My answer to your fourth inquiry is in the affirmative. Quarterly Report of Attorney General October-December 1935, p. 139.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. F. B. Thompson,
Judge of Probate, Clay County,
Ashland, Alabama.

June 26, 1936.

Counties—share of gasoline tax cannot be used to aid erection of hospital.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 5, 1936, which is as follows:

"The Court of County Commissioners of Clay County is contemplating the erection of a county hospital, with the aid of funds to be granted by the Federal Government through the Public Works Administration.

"Kindly advise me, first, whether the court can appropriate and use any money on hand derived from the county's share of the gasoline tax collected by the state and divided among the several counties of the state for such purposes. Second, advise me if the county can borrow money to match such federal grant and appropriate, or pledge any part of the county's share of the gasoline tax collected by the state and divided among the several counties for the payment of such obligation, and the interest thereon."

I am of the opinion that both your inquiries should be answered in the negative. The use of gasoline tax is now governed by Sections 156.9, 156.10, 156.11 of the Revenue Act of 1935, with the exception of special or local 1936 Acts dealing therewith. The special or local 1936 Acts above referred to have no bearing on the instant inquiry.

Schedules 156.9 and 156.11 of the Revenue Act of 1935, pp. 318 and 320, provide for the expenditure of the county's share of the gasoline tax received from the State.

Schedule 156.9 of the Revenue Act of 1935, imposes a two cents tax, one cent of which is equally divided among the sixty-seven counties of the State. The use of the proceeds of the one cent tax by the county is as follows:

"Such funds when received by the County Treasurer shall be covered into the county road and bridge fund, and shall be expended **exclusively in the construction, maintenance and repair of the public roads and bridges in such county.**" (Italics supplied)

Schedule 156.11 provides for the use of the one cent tax distributed to the sixty-seven counties in the following manner:

"***and said funds shall be used by the several counties of the State exclusively for the **construction, maintenance, supervision and policing of the public roads and bridges in the respective counties**; provided, however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds **are to be used in the construction and maintenance of roads in said county**, to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama." (Italics supplied).

It is evident from the above that no part of the gasoline tax funds can be used in aiding the construction of a hospital, as such would be for the

construction, maintenance, supervision and repair or policing of the public roads or bridges in said county. In this connection I wish to refer you to Quarterly Report of the Attorney General, Vol. I, pp. 6, 128 and 186; Quarterly Report of the Attorney General, Vol. II, pp. 114, 347.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. Edgar Underwood,
Judge of Probate,
Franklin County,
Russellville, Alabama.

If a County is at or above its constitutional debt limit, it cannot borrow money or create debt.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 26, 1936, in which you request my opinion as follows:

"Will you please render to me your opinion on the following question, at your earliest convenience:

"Due to the expansion of duties devolving upon the county to meet the needs provided by law, this county has had to lease offices 'down town' and away from the court house, for the Health Department, the Superintendent of Education and the department set up by the Welfare Board, formerly the Child Welfare Department and with the demand made on the county Agricultural Agent's Department the Court of County Revenue was confronted with the proposition of leasing offices 'down town' or making further provision at the courthouse by additional space for this department; and with the establishment of the law and Equity Court for this county a few years ago, it was necessary to provide a room for the judge thereof; the county records had greatly out grown the vault provided for them in 1890 (more of a dungeon than a vault).

"The Court of County Revenue, several months ago, made a check up of this situation and decided that with the aid of the Works Progress Administration the courthouse could be remodeled and an annex built that would house all the county's departments of government, and give an adequate vault space which had become imperative.

"The Court of County Revenue, with the aid of the Works Progress Administration begun this necessary improvement and it is now in progress.

"This county is bonded to the constitutional debt limit and it was the plan of the court to defray the county's part of this expense by temporary loans, which can be liquidated in probably two or three years.

"In setting up the budget for the county last fall, it was impossible to make adequate provisions for this construction expense. We find that we are limited in negotiating temporary loans to 95% of last year's amount, which is inadequate for this expense.

"Can the Court of County Revenue negotiate temporary loans under Section 17 of the Budget Act for the completion of the courthouse improvement "project mentioned above."

In order for you to be able to make the improvements, you must either pay for the same out of your current revenues or you must be able to create an indebtedness by borrowing money to take care of the same.

As to the first, I gather it is taking all of your current revenue to pay current expenses, that is, your involuntary expenses, fixed expenses.

As to your second proposition, you say you are now at your constitutional debt limit. The above being true, you cannot take advantage of Section 17 of an Act approved Sept. 9, 1935, (General Acts 1935, p. 803) which is as follows:

"Section 17. EMERGENCIES. In the event any situation over which the Board of Revenue, County Commissioner or other like governing body has no control results in an appreciable obligation against the county over and above what said Board has reason to anticipate, and for which no moneys from the current year's income are available to pay, such board may issue its interest bearing warrants as now authorized by law, in an amount sufficient to pay such emergency obligation. And the interest and maturities or principal of such loans shall constitute a part of the budget for the year in which they mature. But before such warrants shall be authorized or sold under this Section, such Board shall inquire into and find that such emergency obligation has accrued, and such finding spread upon the minutes of its proceedings."

I note you say your "County is bonded to the Constitutional debt limit." This being true, you cannot incur further indebtedness and borrow money. I call your attention to the case of Brown, Treas. vs. Gay-Padgett Hardware Co. 188 Ala. 423. Here the Court speaking through Justice Somerville, says:

"As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its ordinary current obligations incurred during and for the year "for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred claims; that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenue on hand or in valid expectancy, are debts which are repugnant to the Constitution and are therefore invalid as to their payment."

I also call your attention to the cases of Gunter et al v. Hackworth, et al. 182 Ala. 205 (62 So. 107). Biennial Report 1928-30 p. 618.

Sou. Ry. Co. v. Jackson Co. 189 Ala. 436, (66 So. 570)

Therefore, I am of the opinion that under Section 17, supra of the Act of 1935 quoted above, your Board of Revenue is without authority to negotiate a temporary loan, such as you contemplate.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. J. H. Green,
Clerk, Circuit Court,
Decatur, Alabama.

National banks held to be agencies of the Federal Government.

1. Exempt from trial tax in Alabama.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"Will you please give me your official opinion as to whether or not the Receiver of an insolvent National Bank is chargeable with the \$3.00 trial or revenue tax? I have several cases where the Receiver has gotten judgments, and the execution issued against the defendants, and the same returned by the Sheriff "No property found". I have presented the Receiver with bills of costs, and he writes me that the State trial tax is not allowable. I am sending you herewith a letter received from such Receiver, and will ask that you return this letter with your report."

In reply, I wish to advise that in my opinion, the answer to your question must depend, upon the question of whether or not a National Bank is, for taxing purposes, an agency of the Federal Government and, secondly, whether or not trial tax in Alabama is a revenue raising measure.

Courts have held that a National Bank is such an agency of the Federal Government. See 3 R. C. L. 287 and authorities cited in Note 1 thereof.

This places a National Bank, for taxing purposes, in the same classification as the Federal Reserve Bank. This office has repeatedly held that Federal Reserve Banks are not subject to trial tax or a tax of this character, for the reason that the tax is a revenue raising measure. I wish to refer you to Biennial Reports of the Opinions of the Attorney General for the period 1930-1932, page 703 and to the authorities cited therein. See, also, Section 531 U. S. Code Ann., p. 363.

Premises considered, it is my opinion that a Receiver of a National Bank cannot be legally required to pay this tax.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. John Dale Bonner,
Chairman, Board of Registrars,
Wilcox County,
Camden, Alabama.

Board of Registrars of Wilcox County—When the Board must and may meet.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 1, 1936, in which you state:

"On April 21, 1936, the Governor approved House Bill No. 171 relative to the times of meeting of Boards of Registrars. After reading this Act carefully, I am still in doubt as to when the Board should meet in Wilcox County.

"Therefore, I am writing to ask that you be kind enough to give us an official ruling as to when the Board of Registrars should meet in Wilcox County.

"Will you kindly advise when the Board must meet, and when it may meet, if called or authorized by the Court of County Commissioners? What I want is to know all of the meetings that must or may be had."

In reply, it is my opinion that the Board of Registrars of Wilcox County must meet:

Between October 1st and December 31, 1927, and each two years thereafter, to make a complete registration of all persons entitled to register. Time consumed by the Board in completing said registration shall not exceed thirty working days. (Section 375 of Act No. 289, S. 179, approved August 20, 1927, General Acts of 1927, p. 274).

On the fourth Monday in January, 1928, and each two years thereafter and remain in session ten working days for the purpose of registering voters. (See Act No. 289, supra).

On the first Monday in January, 1936, and each two years thereafter for the purpose of purging the list, and continue in session one week. One week is composed of six working days and Sunday.—See Quarterly

Report of the Attorney General, Vol. II, p. 44. (Section 1 of Act No. 460, H. 926, approved September 13, 1935, General Acts 1935, p. 969).

On the second Monday in February, 1928, and each two years thereafter, and remain in session one day for the purpose of striking names from the registration list. (Section 393 of Act 289, S. 179, approved August 20, 1927, General Acts 1927, p. 276).

On the first Monday in July, 1936, and each year thereafter, and remain in session for five days for the purpose of registering voters. (Section 1 of Act No. 155 H. 171, approved April 21, 1936, General Acts of 1935, Extra Session).

In my opinion the Board of Registrars of Wilcox County may meet when ordered by the court of county commissioners, board of revenue, county commissioners, or other court of like jurisdiction, for ten working days during the month of January, 1921, and each two years thereafter, for the purpose of registering voters. (Section 1 of Act No. 155, supra).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. William D. Peeler, Register,
Circuit Court in Equity, Lauderdale County,
Florence, Alabama.

Costs growing out of the sale of land for partition or division, is the first money paid out of the proceeds of the sale.

Attorney's fee, strictly speaking is no part of the costs of court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 20, 1936, in which you request my opinion as follows:

"There has been a decree of sale and also the decree of conformation rendered by this Court, in a cause in this Court, and the property did not bring enough to cover all cost in this case.

"Please advise me which cost or fees should have prior claims against the proceeds of this sale. Should the proceeds be prorated, or in other words, should the attorney's fee have equal claim against the proceeds of the sale as other fees on prorate basis?"

Where there is petition filed in Court for the partition or sale of lands for division, said sale is had under formal decree of the Court, the property fails to bring sufficient amount to pay all the costs, I gather from your request you desire the following information:

First: Is the cost a preferred claim and should it be paid in preference to all other claims?

Second. Is the attorney's fee a part of such costs so as to participate in the funds obtained as purchase price of said property?

It is my opinion the cost of court growing out of the proceeding seeking to obtain sale of property for partition or division should be paid first and then whatever balance, if any, be distributed among the joint owners.

C. J. 15, Section 207, p. 103.

Section 9327, Code of Alabama, 1923, is as follows:

"9327. Payment and distribution of the purchase money.—Such commissioner may discharge himself from all liability for money received by him for the property sold, by paying over the same to the Judge of Probate, after deducting therefrom the costs and expenses attending the sale, including commissions to him at the same rate that executors or administrators receive for collecting, but in no case more than one hundred dollars; and such net proceeds must be distributed by the judge of Probate among the persons entitled thereto, according to their respective interests."

The taxation of costs is purely statutory and the statute must be followed strictly. At common law, no costs could be recovered.

Brewer v. State, 59 Ala. 130.

Henry v. Murphy, 54 Ala. 246.

As to attorney's fee, strictly speaking, such fees are not a part of the costs. Of course the attorney has a lien on any judgment he may obtain for his client for the amount of his fee, but this is a matter between his client and himself.

In this connection I call your attention to Section 9319, Code of Alabama, 1923, which is as follows:

"In all cases of the partition or sale of property for division of proceeds, the court may, in its discretion, allow a reasonable solicitor's fee to the solicitors of the parties, to be taxed as a common charge on all the interests, and to be paid out of the proceeds in case of a sale, when the services are for a common benefit of all, and to be a lien on the several parts in case of partition."

The above quoted section comes under partition in the Code and deals with attorney's fees arising under sales of property for division or partition, and, in my opinion, should govern in cases of this character.

In this connection, I might call your attention to Section 6261, Code of Alabama, 1923. It is true this Section says attorney's fee, and when proven, becomes a part of the costs. This is true, but I do not think this means a part of the court costs, but an item of cost incidentally growing out of the proceeding, and cannot, I do not think, be placed on a parity with Court costs.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 27, 1936

Hon. John B. Sockwell,
Sheriff, Colbert County,
Tuscumbia, Alabama.

Where, on account of the jail being insecure in a county, a special guard has to be employed, the county where the jail is located is chargeable with this expense.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 26, 1936, in which you request my opinion as follows:

"I have been notified by the United States Prison Inspector that the County Jail of Colbert County is insecure and insufficient and I have reasons to apprehend that the prisoners will attempt to escape. I have a night guard employed to watch the Jail, and the County pays for his services. Would I be authorized under section 4813 Code of Alabama, 1923, to summons a guard for day duty at the Jail? Would the Probate Judge be authorized upon the approval of the County Commissioners to draw a warrant to compensate a day guard for the prisoners at the jail?"

Under an opinion of this office written February 13, 1931, this office held that a sheriff had the right to employ such guard, Biennial Report of Attorney General 1930-1932, p. 100, copy of which opinion I am herewith enclosing. Therefore, it is my opinion if the sheriff has a right to employ such guard, it naturally follows that it would be the duty of the County to pay such expenses.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 1, 1936.

Hon. G. H. Howard,
Elmore County,
Wetumpka, Alabama.

County not liable for injury sustained on bridge unless negligence and statutory requirements imposing liability on county concur.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of May 1, 1936, in which you request my opinion as follows:

"We had the abutment of a bridge of one of our county roads washed out after dark one night from a heavy rain. Before day light of the same night, a citizen of the County, attempting to pass the bridge, his car was damaged to the amount of \$25.00. We think this is a reasonable damage.

"Please advise at your earliest convenience if we can pay injured party this amount of \$25.00."

I am of the opinion that the facts as set forth by you, are not sufficient to show liability on the part of the county, and without further facts, showing such liability, the county would not be authorized to pay damages.

In general a County is not liable for injuries occurring on a bridge which was not constructed or erected by the county, or which was constructed or erected by the county without the intervention of an independent contractor (in the absence of statute imposing liability). The county is liable under certain circumstances when the bridge is constructed by independent contractors. (Section 6457, Code of 1929).

The question of whether or not the county was negligent is an important element. In this connection, I suggest that you read *Hovater v. Franklin County*, 217 Ala. 439; 116 So. 526 (1928), which is an action for failure to maintain a railing along the side of a bridge. In that case the allegation was very similar to the matter as stated in your letter, the complaint merely alleging that "the railing along the side of the bridge was down" and that this resulted in the plaintiff's injury.

The court said that this complaint did not show any negligence on the part of the county or its officials and of course, no negligence would be presumed. In the words of the court:

"* * * this complaint nowhere alleges negligence on the part of the defendant or its officials. A complaint may state facts from which negligence appears as a necessary concomitant. Such complaint to be good must at least exclude the probability that the injury resulted from other than negligence, want of the degree of care imposed by law in the circumstances. The complaint does not meet the test. Construed against the pleader, it shows a railing was maintained, but was down for some undisclosed cause at the time, and for ever so short a time prior thereto.

"The law, in the absence of averment, does not presume a failure of duty on the part of public officials. The complaint should show it was down or had not been remedied by **reason of negligence.**" (Italics supplied).

It would not be proper for a county to pay damages in the sum of \$25.00, regardless of how reasonable such damages might be, unless those elements existed which created liability on the part of the county.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 1, 1936.

Hon. H. E. Williams,
County Supt. of Education,
Lauderdale County,
Florence, Alabama.

County Board of Education of Lauderdale County not authorized to expend funds for purpose of paying hospital bills, actual expenses of, and buying artificial foot for, child injured by school bus through no fault of the driver.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of May 7, 1936, which follows:

"A school bus ran over a child here and injured it so that one leg had to be amputated. The accident was not due to any fault of the driver but the County Board would like to pay the hospital bill and actual expenses and buy an artificial foot for the child if such can be legally done. Please advise if the County Board of Education can pay above expense."

I reply, I wish to advise that it is my opinion that the County Board of Education of Lauderdale County cannot legally expend the school funds of said county for the purpose indicated in your letter.

To make such an expenditure would be a mere gratuity on the part of the County Board of Education of Lauderdale County, since a County Board of Education cannot be sued in tort for damages.

"Suit against the county board of education is, in effect a suit against the State and cannot be maintained. Constitution of Alabama, 1901.

"Even where authority to sue a governmental agency of the State is given by statute, such authority does not extend to suit upon a tort for damages. *White v. Insane Hospital*, 138 Ala. 479."

Biennial Report Attorney General, 1926-28, page 730.

But, under the facts stated by you, the driver of this school bus was not at fault, so there is not even a moral obligation on the part of the County Board of Education to make such an expenditure, much less a legal obligation.

A County Board of Education can only make such an expenditure of the school funds as it is authorized to make by statute.

"An administrative board or other agency, the creature of legislation, has only the powers conferred by its creator. Every such board charged with the duty of devoting public funds to ends prescribed by law must point to a 'thus saith the law' for every disbursement.

"Unless a given charge on such fund is expressly or impliedly authorized, it cannot be lawfully incurred.

"No such power is implied unless an intention to confer it can be seen from the entire scheme of legislation implied because incident to, and embraced within, express powers.

"This familiar rule, as applied to use of public funds, has often been held binding upon local governing bodies having a quantum of legislative authority, such as the governing bodies of counties.

"It is an essential safeguard, and should never be relaxed. Every reason demands the same rule shall apply to county boards of education and like agencies." *Woodruff v. Beeland*, 220 Ala. 652.

There is no statutory authority for a County Board of Education to expend county school funds gratuitously. Therefore, the County Board of Education of Lauderdale County cannot expend the county school funds of Lauderdale County for the purposes mentioned in your letter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. J. R. White,
Chairman, Board of Revenue,
Walker County,
Jasper, Alabama.

July 7, 1936.

Counties—Where debts outstanding as of October 1, 1935 were paid by temporary loan rather than refunding warrants, refunding warrants may now be issued under the provisions of Act No. 379, H. 191, approved September 9, 1935 (General Acts 1935, p. 803), known as the County Financial Control Act.

Opinion by Assisstant Attorney General Screws.

Dear Sir:

I have your letter of June 24th, 1936, which is as follows:

"I would like to have your opinion as to whether or not Walker County may borrow money or issue interest bearing warrants under the provisions of the emergency clause or any other provisions of the County Financial Control Act under the following circumstances and for the following purposes:

"On October 1, 1935, there were outstanding obligations against the general fund of the county of approximately \$10,000. A temporary loan was made in the sum of \$12,000 which was used to pay these outstanding obligations instead of refunding same which could have been done. Another temporary loan of 95% of the \$12,000 was made in 1936 to repay the 1935 loan.

"As the matters now stand, the County is unable to meet its obligation for necessary current governmental operating expenses. This situation arose due to the fact that the claims outstanding as of October 1, 1935, were paid in full by the temporary loan of \$12,000 instead of issuing refunding warrants to cover same. Walker County is within \$250,000 of its constitutional indebtedness."

I am of the opinion that refunding warrants may now be issued up to \$10,000 under the circumstances as above set out.

The situation presented by your inquiry is analogous to the one presented in an opinion rendered to the Judge of Probate of Hale County on February 8, 1936. (Quarterly Report of Attorney General, Vol. II, p. 138). In said opinion it was held that refunding warrants may be issued in a case where a temporary loan was made to pay a debt that was outstanding as of October 1, 1935, under the provisions of Sections 9 and 10 of the County Financial Control Act. Said opinion stated:

"The fact that a temporary loan has been secured to take care of this obligation merely changes the form of the obligation and does not prevent its being a general obligation."

In the instant case refunding warrants could have been issued up to \$10,000 to care for the obligations outstanding as of October 1, 1935. Instead of doing this a temporary loan was made. This merely changed the form of the obligation. Therefore, in my opinion, refunding warrants may still be issued up to \$10,000 to care for the outstanding claim of this amount as of October 1, 1935.

Section 17 of the County Financial Control Act dealing with temporary loans for emergencies does not, in my opinion, apply to the facts set out in your letter. Section 17 deals with situations over which the county governing body has no control.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 7, 1936

Hon. W. L. Little,
Superintendent of Education,
Cherokee County,
Center, Alabama.

County Board of Education — Members of the County Board of Education are entitled to expenses for only twelve days in any one year.

Meetings of the County Board of Education should be counted from October 1st, the beginning of the fiscal year.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of June 24, 1936, in which you state:

"It is my understanding that under the law the County Board members may be paid for only twelve meetings each year."

You request my opinion as follows:

"1. Is it your opinion that this law prevents their actual expense to and from Board meetings from being paid for attendance on meetings in addition to the twelve allowed by law?

"2. From what date should County Board meetings be counted in determining the number to be held in a year?"

Answering your first question, it is my opinion that the members of the County Board of Education are entitled to expenses for only twelve days in any one year and cannot be reimbursed for the actual expenses incurred in attending meetings in addition to the twelve days as provided by law. — See **Biennial Report of Attorney General, 1930-1932**, p. 26; also **Biennial Report Attorney General, 1928-30**, p. 617.

Answering your second question, it is my opinion that the meetings should be counted from October 1st, the beginning of the fiscal year. — See **Biennial Report of Attorney General, 1926-1928**, p. 299.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 7, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Tax Assessors — entitled to commissions on assessments made by them prior to October 1, 1935, on lands bid in by the State at tax sales, although money would not be received until After October 1, 1935.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of July 1, 1936, which is as follows:

"The Revenue Code of 1935 effective October 1, 1935, does not give Tax Assessors commission taxes on lands bid in by the State.

"Are Assessors due commissions on assessments made by them prior to October 1, 1935 even though paid from the first monies collected by the Tax Collectors after October 1, 1935?"

I am of the opinion that your inquiry should be answered in the affirmative.

Prior to October 1, 1935, the effective date of the 1935 Revenue Act, tax assessors were entitled to commissions on assessments made by them on taxes on lands bid in by the State. (Section 3040, Code of 1923). Section 24 of the Revenue Act of 1935 specifically provides that tax assessors shall not receive commissions on taxes on real estate bid in by the State at tax sales. The question then presents itself as to whether or not tax assessors are entitled to such commissions when the assessments are made prior to October 1, 1935, although they would not receive the money until after October 1, 1935.

This office has heretofore ruled that the fees and commissions of a tax assessor accrue when he actually earns same and not when same are paid. In other words, said fees and commissions accrue when the assessments are made. — See *Quarterly Report of Attorney General*, Vol. 1, p. 154, and opinions cited therein.

An application of the above principle to the instant inquiry leads to the conclusion the tax assessors are entitled to the commissions on assessments made by them prior to October 1, 1935, on lands bid in by the State at tax sales. The commissions accrued when the assessments were made although the money would not be received until after October 1, 1935. Section 24 of the Revenue Act of 1935 is not, in my opinion, retroactive.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 7, 1936

Hon. Cecil C. May, Clerk,
Circuit Court of Butler County,
Greenville, Alabama.

Section 76 of Act approved August 23, 1927, (General Acts 1927, p. 348) while including a misdemeanor and a felony, yet the degree of the offense must be governed by the highest punishment, which, under this law, here is a felony. Therefore, the costs of the prosecution must be collected as in all felony cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 24, 1936, in which you request my opinion as follows:

"On April 17th, 1935, we had a conviction in the Circuit Court under Section 76, General Acts, 1927, p. 348-376, Duty to Stop in Event of Accident, and a fine of \$187.50 assessed against him by a jury;

"He took an appeal to Appellate Court, said Appellate Court affirmed the lower court, Opinion rendered January 21st, 1936.

"Heretofore the Supreme Court has held that this was a Felony.

"Now the question is in making up the transcript and cost Bill in this case (The defendant having been sentenced to Hard Labor for 70 days to pay the fine and so many days at 75c per day to pay the costs) should I charge \$30.00 Solicitor's Fee? (for each conviction of felony not otherwise provided for) or should I charge \$10.00 Solicitor's Fee? And should I charge \$4.00 for Arrest Fee (Sheriff's) or \$2.00 as provided under Misdemeanor cases where the defendant is sentenced to Hard Labor?

"Please let me have your Opinion as to Solicitor's and Sheriff's fees in this case by return mail as I have notified the defendant to be ready to report within 15 days from January 21st, 1936."

Under the case of State v. Hall, 24 Ala. App. p. 336, I am holding that no matter what the punishment is under the statutes you refer to, the offense is felony and you are authorized to collect costs as in all other felonies; without regard to the punishment, therefore, the Solicitor's fee would be \$30.00 and the arresting fee \$4.00.

I call your attention to Section 3738, Code of Alabama 1923. This has to do with solicitor's fee, and your attention further to subdivision of this Section which is as follows:

"For each conviction of a felony not otherwise provided for \$30.00."

I find no other provision regulating solicitor's fee in this matter, and the Court of Appeals and the Supreme Court have held that no matter what the punishment is that the degree of crime is governed by the highest penalty. Therefore, the statute is declaratory of a felony. See Section 76, General Acts 1927, p. 348, which is as follows:

"Section 76. DUTY TO STOP IN CASE OF ACCIDENT. (a) The driver of any vehicle involved in an accident resulting in injury or death to any person or resulting in the damage to property, shall immediately stop such vehicle at the scene of such accident.

"(b) The driver of any vehicle involved in an accident resulting in injury or death to any person or damage to property shall also give his name and address, and the registration license number of his vehicle and shall render to any person injured in such accident reasonable assistance, including the carrying of such person injured to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by such injured person.

"(c) Every person convicted of violating this section, relative to the duty to stop in the event of accidents shall be punished by imprisonment in the County or municipal jail for not less than thirty days nor more than one year or in the state prison for not less than one nor more than five years or by fine of not less than one hundred dollars nor more than five thousand dollars or by both such fine and imprisonment. The court shall revoke the permit or license of the person so convicted."

See also *Clifton v. State*, 73 Ala. 473.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 9, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Counties — expense of audits of county officials is not such a claim against a county as to require presentation to county governing body for approval, and, therefore, is not barred under Section 228, Code of 1923, if not presented within twelve months.

Opinion by Attorney General Screws.

Dear Sir:

I have your letter of June 19, 1936, which is as follows:

"Upon completion of an examination in a County by an Examiner of Public Accounts, Section 749 of the 1923 Code provides that he shall then make out a claim and file with the proper authorities, etc., said claim covering the charge due the State by the County for the said County's portion thereof.

"We have a balance outstanding and due the State by a County at this time where the circumstances are as follows, i. e.

"Examiner mails a copy of the claim from another town to the county official in the county where the audit was made. The county denies having received the claim and now that several years (5 years) have elapsed, the Attorney for the county contends that the statute of limitations has run on the claim and it therefore is barred from legal payment. Will you please advise us as to the rights of the State in the premises."

The question as to whether or not the claim was presented immediately after the audit presents one of fact. However, this is immaterial as said claim, in my opinion, is not such a claim against a county as to require presentation to the county governing body for approval, and, therefore, is not barred under Section 228 of the Code of 1923, if not presented within twelve months.

"Section 749. Expense account against county; how audited and paid. — Immediately after the completion of an examination of the several county officers, which shall be made at the same time that examinations are made for the State, the examiners making such examination shall make out an account, under oath, for and in the name of the state, against said county, for approximately the number of days engaged in the county examination for such county at the same rate of pay and expense allowed for state work, and file the same with the clerk of the board of revenue, court of county commissioners or courts of like jurisdiction of said county, and also file a duplicate thereof with the state auditor, and the state auditor shall thereupon draw his warrant upon the county treasurer for said amount, and the county treasurer, immediately upon receipt of the auditor's warrant, shall pay the said amount into the state treasury out of the first county funds coming into his possession."

It will be seen from the above that such a claim is definite and certain and there is no opportunity or need for an audit by the county governing body. A summary remedy is provided for its collection. (See Section 750, Code of 1923). As otherwise stated, it is not a claim of the class that requires the audit and approval of the county governing body, under Sections 224 and 225 of the Code of 1923, before payment can be made. *State v. Stone*, 229 Ala. 357, 157 So. 454; *Mobile County v. Barnes-Creary Supply Company*, 225 Ala. 127, 142 So. 72; *Lovelady v. Loveman, Joseph & Loeb*, 191 Ala. 96, 68 So. 48.

There being a specific provision of law authorizing and requiring the payment of the claim in question, the general statutes, requiring the presentation of claims against counties and creating a limitation period, are without application. — *Lovelady v. Loveman, Joseph & Loeb*, supra, *Dale*

County v. Gunter, 46 Ala. 118. See also **Board of Revenue v. Johnson**, 200 Ala. 532, 76 So. 858.

The premises considered, it is my opinion that Section 228, Code of 1923, which provides that claims against a county must be presented within twelve months, has no application to the claim in the instant case. I know of no statute which creates a bar after five years.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 9, 1936

Hon. Henry S. Long,
State Land Commissioner,
State Tax Commission,
Capitol.

Attention Mr. J. T. Carlton, Clerk.

Taxation Land Agents:

Where lands which have been sold to State for taxes are sold by the State Land Commissioner and proceeds collected by him, any compensation due the State Land Agents should be paid out of such collections before the remainder is disbursed to the various agencies entitled thereto.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of May 25, 1936, in which you state:

"By the provisions of Act. No. 440, House Bill 1048 by McDermott, approved September 13, 1935, the State Land Commissioner is authorized to contract with land agents to secure sales of property and for such services to allow a compensation not to exceed 10% of the proceeds of the sale. In making sales of tax lands the conveyances are executed by the State Land Commissioner and the funds derived from such sales are received by the Land Commissioner and certified to the Comptroller for deposit in the State Treasury, including the funds belonging to the county and county officers as well as the funds belonging to the State. These various funds are set up on the basis of a distribution furnished to the Comptroller by the State Land Commissioner and the county funds are paid over to the Judge of Probate of the county on warrant drawn by the Comptroller of the State Treasury.

"The question arises as to how the land agents appointed under the authority of the above act are to receive the compensation allowed under

the provisions of said act on sales. In an opinion rendered by your office on December 3, 1935 to the Hon. W. W. Hill, Judge of Probate of Montgomery County (Quarterly Report, October 1935-December 1935, page 291), discussing fees of agents on redemptions, you held that, "The statute is silent as to how the compensation shall be paid, but it does provide that it shall be paid from the funds so received." As stated above, the funds received for land sales are distributed by the Comptroller to the county and to the various funds of the State. Should the Judge of Probate deduct the commissions due to the land agent from the funds received by him from the Comptroller before making his distribution to the various funds of the county?

"It is apparent that the commissions on the State funds would necessarily come from the Comptroller, for he is the disbursing officer for the State, but the question has arisen as to whether or not the Judge of Probate is the proper official to disburse the commissions on the county's part of the proceeds of land sales.

"It occurs to this office that the Comptroller would have no authority to make deductions from the county's funds by reason of the commissions, but is required to pay over to the Judge of Probate the full amount of the county's part of the proceeds of the land sale. We would thank you to give us your opinion as to whether our interpretation of this provision of law is correct."

In reply, I advise that in the opinion to which you referred of December 3, 1935 to the Hon. W. W. Hill, and also in opinion of February 21, 1936 to Hon. W. M. Vaughan, Probate Judge of Dallas County, Quarterly Report Vol. II, page 194, this office held that as the statute provided that the commissions of the Land Agent should be paid from the proceeds, and as the Judge of Probate collected the proceeds on redemption, presumably he was the proper party to disburse them.

However, in the case suggested by you there is a sale by the State Land Commissioner of the State's interest and the proceeds are paid to him and it is therefore my judgment that upon a parity of reasoning with the former opinions he, as the official who receives the funds, should pay the commissions before disbursement to the various agencies entitled to their pro rata part. As the Comptroller is the disbursing and distributing officer of the State, presumably he should pay these commissions upon proper certificate from you and disburse the net proceeds to the various agencies in proportion to the amount due each.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 9, 1936

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Under Section 291 of the General Revenue Law of 1935 as amended by the Act approved Mar. 26, 1936, taxes accruing on the property subsequent to the redemption, should be paid to the Tax Collector.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 16, 1936, in which you state:

"In extraordinary Session of 1936, Section 291 of Revenue Law, approved July 10th, 1935, was amended to read:

" * * * Probate Judge of the County where the real estate is situated, the same to be approved by the State Land Commissioner, and shall deposit with the Probate Judge a sum equal to not less an one-fourth of accrued taxes, without interest or penalties, and annually thereafter shall pay not less than one-fourth of said sum to the Probate Judge. The party redeeming said property shall, within thirty days from the date of making said initial payment, assess said property for taxes for the then current tax year, and the same shall be assessed for each year thereafter in the manner required by law, and the taxes for the subsequent tax years shall be paid in the manner required by law. Upon the payment of all back taxes, as provided for herein, and of all taxes for the subsequent tax years, which has accrued, a certificate of redemption shall be issued as in other cases. This Act is to take effect upon its approval by the Governor.

"Approved March 26, 1936."

"Is current year tax under this amendment payable in regular way to Tax Collector of County, if so, should Probate Judge demand that tax receipt for current year taxes, be in evidence, before accepting quarterly payment, or should receipt for quarterly payment be Collector's authority to accept payment of current year's tax, or should Probate Judge collect current year's tax together with the quarterly payment on accrued tax?"

In my judgment, under the amended section, the statute clearly intends that taxes based on assessments made subsequent to redemption, shall be paid to the Tax Collector. I so construe the term, "in the manner required by law." It would appear that if the annual redemption payment is payable subsequent to the due date of the annual taxes paid to the collector, that the redemptioner should make some showing to you, either by tax receipt or other satisfactory evidence that the annual taxes accrued subsequent to the redemption have been paid.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 9, 1936

Hon. G. C. Brittain,
Secretary of Board of Revenue,
Calhoun County,
Anniston, Alabama.

County Officials' Bonds — Act No. 191 — Bains, approved April 20, 1933, Acts 1933, p. 203, with reference to official bonds of county officials repeals the Local Act 1927, p. 345, relating to Calhoun County and such County is governed by the provisions of the General Act of 1933.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 23, 1936, requesting my opinion as follows:

"The Board of Revenue of Calhoun County, Alabama, desires your opinion upon the following:

"Under Local Acts of the Legislature of Alabama, 1927, page 345, the chairman of the Board of Revenue furnished bond in the sum of \$5000.00 and each associate member furnished bond in the sum of \$2500.00 and each paid the premium for his bond.

"When the Legislature of Alabama in extra session in 1933 passed the act appearing on page 203 of this Extra Session of 1933, the Board of Revenue of Calhoun County considered they were governed by this act and especially by Section 13 thereof and have since that time executed bonds as provided by said section, and the premiums have been paid by the county as provided by Section 20 of this Act.

"Please advise the Board of Revenue whether or not they are governed as to the making of their official bond and the payment of the premium thereon by the local act above referred to or by the general act above referred to.

"Attached hereto is copy of opinion rendered to the Board of Revenue by local attorneys for said Board of Revenue."

It is my judgment that the General Act appearing in Acts of 1933, page 203, is a repealer of your Local Act so far as the same may be in conflict. It appears that the General Act is intended to create a uniform system of uniform regulations for the entire State and all of the Counties.

In the first section it refers to "all county officials" and "of all counties in the State." Beginning Section 13, specific reference is made to "each county." Section 26 specifically repeals all laws or parts of laws in conflict with this Act. While, as a general rule, a general law does not repeal a local law, yet where there is a clear legislative intent it has that effect. In my

judgment this General Act was intended to create a uniform system and it was the intention of the legislature to repeal any conflicting laws, whether local or general.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 11, 1936

Judge Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Judge of Probate required to give special bond as ex officio Chairman of Board of Revenue under Section 13 of the Bains Act (General Acts, 1933, Extra Session, p. 203).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of June 29, 1936, in which you request my opinion as follows:

"I am under a \$25,000.00 bond as Judge of Probate. Please advise me if I should be under a special bond as ex officio Chairman of the Board of Revenue.

"The Board of Revenue of this County operates under a local law found in the Local Acts of 1935 at page 253."

In my opinion your inquiry should be answered in the affirmative.

I call your attention to the Bains Act of 1933 (General Acts, 1933, Extra Session, p. 203) providing for and requiring bonds of county officials. Section 13 of this Act provides as follows:

"Section 13. That each member of the Court of County Commissioners, of the Board of Revenue or like governing body of each county shall be required to give a bond in the sum of at least \$3,000.00 to be fixed and approved by the Judge of the Circuit Court of a Circuit of which such county forms a part and where there are two or more Circuit Judges in said Circuit, then said bonds shall be fixed and approved by the Senior Judge of said Circuit."

By Section 6748, Code of Alabama, 1923, the Judge of Probate is made as much a member of the commissioner's court or other county governing body as are the other four members composing said body.

Accordingly the Probate Judge must comply with Section 13 of the Bains Act, supra, and give bond in the sum of at least \$3,000.00, etc., as well as the official bond prescribed for the Judge of Probate by Section 4 of said Act. Cf. Biennial Report of Attorney General, 1932-34, page 62.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 18, 1936

Hon. J. E. McAdory,
Deputy Tax Assessor,
Court House,
Bessemer, Alabama.

Taxation — Party possessing Letters of Guardianship in accordance with Acts of Legislature of 1931, p. 280, held not per se entitled to exemption granted to insane persons by Section 2 (f) of the Revenue Bill of 1935.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of April 14, 1936, in which you request my opinion as follows:

"I wish an official opinion as to when a man is exempt from ad valorem taxes upon the claim of incompetency as issued by the Probate Judge.

"A copy of letters of guardianship, as an example, follows:

"That on application of _____ as provided by the Uniform Veterans Guardianship Act, I have caused these letters of guardianship to issue in favor of the said _____ in accordance with the Acts of the Legislature of Alabama of 1931, page 280, and with the authority therein provided, upon the estate of _____, incompetent.

"Witness, _____ Judge of our said Court, this _____ day of _____, A. D. One Thousand Nine Hundred and _____

Judge of Probate."

I call your attention to an opinion of this office to the Hon. Elmer L. Vinson, Tax Collector, Limestone County, under date of April 18, 1936, in which it was held that while it was not necessary for a party claiming exemption from ad valorem taxes granted by Section 2 (f) of the Revenue Bill of 1935 to be legally declared insane, nevertheless, the fact of insanity must be established by "satisfactory proof to the proper officer."

In my opinion, the issuance of the Letters of Guardianship set out by you would not per se be such proof of insanity as would entitle the party to exemption. The said Letters of Guardianship pronounces the recipient "incompetent."

Section 2 (f) demands that the persons claiming the exemption therein provided be "insane". While it is true that all insane persons are incompetent, nevertheless the converse is not a fact.

Your attention is directed to the following cases setting forth the rule that the term "mentally incompetent" denotes anyone, who, though not insane, is by reason of old age, disease, weakness of mind, or from any other cause unable unassisted, to properly manage or take care of his property or himself.

Sabine v. Commonwealth, 26 S. W. (2d) 506, 509 (KY) In re Keiser, 204 N. W. 394, 396 (Neb.) State v. Dist. Court, 147 P. 612, 614 (Mont.) Shelby v. Farve, 126 Pac. 764, 765 (Okla.)

We note a further distinction between the terms "insane" and "mentally incompetent" by reference to the two instances in the Code of Alabama where "insane" is defined.

In the chapter relating to guardian and a ward a "person of unsound mind" is defined as including "idiots, lunatics, or the insane". (Sec. 8119). No mention is made of the "mentally incompetent". Again, in Section 1439, we find a definition of the insanity which renders a person eligible as a patient in a State insane hospital, as follows:

"1439. Insanity defined which renders person eligible as patient. — A person shall be adjudged insane who has been found by a proper court sufficiently deficient or defective mentally to require that, for his own or others' welfare (or she) be removed to the insane hospital for restraint, care and treatment. Whether the person's mental abnormality is sufficiently grave to warrant such procedure is always the question to be decided by the court."

Whether the person pronounced **incompetent** was in fact insane is, as said supra, a matter within the sound discretion of the tax officials, upon satisfactory proof being offered.

Premises considered, it is my opinion that the Letters of Guardianship, while evidence of insanity, would not, of itself, be sufficient to entitle the party possessing same to the exemption granted by Section 2 (f) of the Revenue Bill of 1935. Cf. Biennial Report 1932-1934, page 578.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 18, 1936

Hon. Henry S. Long, President,
State Tax Commission,
Capitol.

Attention Mr. Harry Simon, Chief Clerk, License Department,

License — Coal Dealers:

Under Schedule 36.1 the Probate Judge is not entitled to a fee of 50c for issuing the registration tag required thereunder. Under Schedule 36.2 the license being measured by the number of trucks used, the license issued, while placed on the truck, is the business license required and the Probate Judge is authorized to collect a 50c fee for the issuance of each license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 11th, in which you state:

"Under Schedule 36.1 and 36.2 of Revenue Bill of 1935, a 'Coal-Coke Dealer or Hauler' tag is required of coal or coke yards and persons selling, distributing or hauling or delivering coal or coke by truck or other vehicle, which tag is to be attached to each truck or other vehicle engaging in such business, and for which such persons are required to pay a registration fee of \$1.00.

"An issuance fee of 50c for each tag so issued, has been collected by numerous Probate Judges. There has been a great many applications for refund of this 50c issuance fee, the licensee contending that it was not a legal charge.

"Please give us your opinion as to whether the Probate Judges of this State are required to charge this fee for such 'Coal-Coke Dealer or Hauler' tags."

Referring to Schedule 36.1, I advise that this levies a license on what are commonly known as coal yards and for the issuance of this license the Probate Judge is entitled to a 50c fee. The Schedule goes on, however, and requires such dealers to register "with the officer in the county collecting and issuing licenses, the number of trucks to be operated from his one or more yards and shall at the time of such registration pay a fee of \$1.00 per truck for each truck so used. * * * " The provision again refers to the fee as a "registration fee".

Section 350 provides in substance that:

"A person may pay the probate judge the amount required for such license to carry on such business and upon payment of such amount and

a fee of 50c to the Probate Judge for the issuance of such licenses the same shall be issued."

It would seem that this is a fee for the issuance of licenses as distinguished from the payment of a registration fee as Schedule 36.1 so clearly terms the \$1.00 per truck required to be paid, and that no issuance fee is payable thereon.

With reference to Schedule 36.2, the license, while on the selling, distributing, or hauling of coal, is levied when such business is conducted by particular methods as distinguished from the operation of coal yards and the license is graduated according to the number of trucks used. The license issued and which is placed on the truck is, therefore, the license within the meaning of Section 350 and the payment of the 50c fee to the Probate Judge is proper.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 18, 1936

Hon. I. I. Moses,
Chairman, County Commission,
Russell County,
Phenix City, Alabama.

Probate Court — Held court of record under the provisions of Section 4557 of Code of Alabama of 1923 and may order inquest under said section.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of July 10, 1936, in which you request my opinion as follows:

"The coroner of the County has presented the County with a statement for services rendered for the holding of an inquest, wherein there appears on the statement the endorsement of the Honorable C. B. Gullatt, Jr., Judge of Probate of the County, ordering said inquest.

"Under the provisions of Section 4557 of the Code of Alabama of 1923 an inquest may be ordered either by a Judge of Record or Solicitor, provided, that there is reasonable grounds for believing that such death has been occasioned by the act of another by unlawful means.

"Is the Judge of Probate of the County the Judge of a Court of Record within the meaning of this provision of the Code? Your advice about this matter will be appreciated at your earliest convenience."

In my opinion the Probate Court is a Court of Record within the meaning of Section 4557 of the Code of Alabama of 1923. I call your attention to the case of Whitaker vs. Kennamer, 229 Ala. 80, 155 So. 855, wherein it was held that a Probate Court is a Court of Record. I quote from the Whitaker case:

"The several statutes (sections 9578-9591, Code) and decisions show the court (Probate Court) to be a court of record and to have the right to render judgments in a proper case nunc pro tunc. 15 C. J. 720; Hall, Adm'r. v. Hudson, Adm'r., 20 Ala. 284; Dabney v. Mitchell, 54 Ala. 198; Campbell v. Beyers, 189 Ala. 307, 313, 66 So. 651; Zaner v. Thrower, 203 Ala. 650, 84 So. 820; Lewis v. Martin, 210, 98 So. 635."

Accordingly it is my opinion that an inquest may be ordered by a Judge of Probate under the circumstances set out in Chapter 162, Code of Alabama of 1923.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 18, 1936

Hon. A. M. McConnell,
Judge of Probate,
Limestone County,
Athens, Alabama.

Poll Tax — •

Poll Tax paid for 1929, though no poll tax for that year was due, cannot be applied to 1928, last year for which poll tax was due but for which no poll tax was paid.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of July 10, 1936, which follows:

"We have, in this County, a lady voter who paid Poll Tax from 1920 through 1927 and then paid again in 1929. This last payment should have been applied to the year 1928 which was her last year to pay. We have been leaving her name off the Qualified Voting List.

"Is there any law, or ruling from your office, or from the Supreme Court that will give me the authority to place this person on the Qualified Voting List?"

"In other words, I would like to know if a person is in good standing as a voter, if he has paid the required number of Poll Taxes, even if some of them were paid for the wrong years."

As I understand the facts detailed in your letter the lady in question paid her poll taxes for the years 1920-1927 inclusive, as they became due, but failed to pay her poll tax for 1928, the last year she was due to pay and then at a later time paid poll tax for the year 1929, even though she was not due any poll tax for that year. I presume that she was not due poll tax subsequent to the year 1928 because of the fact that she was over 45 years of age after that time.

It is my opinion that the said poll tax paid for the year 1929 cannot be credited to the year 1928. This office in opinions to Hon. T. L. Head, Treasurer, Board of Education, Montgomery County, Montgomery, Alabama, under date of February 19, 1935, Office Edition 2-A, page 168 and to Hon. Chas. E. McCall, State Auditor, Capitol, under date of April 18, 1935, Office Edition 3-A, page 210 held that poll tax, voluntarily, though erroneously paid, could not be refunded. I enclose copies of these opinions for your information.

It is my opinion that there is no more authority for crediting a poll tax erroneously paid for one year for which no poll tax was due to a former year for which poll tax was due but not paid than there is for refunding poll tax erroneously paid.

The Supreme Court of Alabama in the case of *Shepherd v. Sartain*, 185 Ala. 439, at page 458, said:

"Where the records show the payment by a voter of poll taxes for a series of years, with a single omission, and show also the payment of two such taxes for a single year, thereby showing that he has paid the number of taxes to which he was subject, it will be presumed, nothing appearing to the contrary, that the duplicated payments was intended for the omitted year and it will be treated as so paid."

The reason for such a holding is obvious. In that case the record clearly showed on its face that there was an error on the part of the Tax Collector which should have been and was corrected.

But such is not the situation in the instant case. I think the error here is clearly one on the part of the taxpayer and not of the Tax Collector and the taxpayer cannot receive any benefit from the erroneous payment.

Therefore, it is my opinion that said person is not a qualified elector even though she has paid the required number of poll taxes due, since she has not paid poll tax for each year such tax was due.

It necessarily follows that you are without authority to place such person on the list of qualified electors.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 20, 1936

Hon. W. L. Pratt,
Judge of Probate,
Bibb County,
Centreville, Alabama.

License — Coal Dealers — A coal mining company that has no coal yard or wagon scales, and which sells coal to employees or anyone who may want to purchase coal dumped direct from their tippie is not subject to a license under either Schedule 36.1 or 36.2 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of sometime ago in which you ask whether or not a coal mining company that has no coal yard or wagon scales but sells coal to employees or anyone who wants to purchase coal dumped from their tippie, is subject to any license.

In reply I wish to advise that it is my opinion that such a company is not liable for a license under either Schedule 36.1 or Schedule 36.2 of the 1935 Revenue Act.

Schedule 36.1 levies a license on persons dealing in coal or coke who maintain one or more established yards with adequate wagon or truck scales from which all retail deliveries are loaded and the license there levied is based on the number of yards so maintained. The coal mining company mentioned by you has no coal yard or wagon scales and clearly could not be subject to the license levied by this schedule.

Schedule 36.2 levies a license on persons, other than those qualified under Schedule 36.1 engaged in selling, distributing, or hauling or delivering coal or coke by truck or other vehicle direct from a mine or plant to consumer. Since the company mentioned by you does not have any truck or vehicle which it uses for the purpose of selling, distributing, hauling or delivering coal or coke, it would not be liable for the license levied by this schedule.

The opinion of this office rendered to you on January 11, 1936, and found in Quarterly Report of Attorney General, Vol. 2, at page 37 deals very nearly with the same set of facts as does this opinion. I find no statement in that opinion which conflicts with the holding here.

Of course, the coal mining company mentioned by you would be liable for the license levied by Schedule 91 of the 1935 Revenue Act on each person engaged in the business of operating a coal mine.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 20, 1936

Hon. J. P. Williams,
Sheriff, Barbour County,
Clayton, Alabama.

Costs — The expense of feeding juveniles committed to the county jail should be charged against the County and not the State.

The expense of feeding insane persons committed to the county jail should be charged against the County and not the State, provided the insane persons have no estate from which said costs can be collected.

The sheriff should be paid the same per diem for feeding juveniles as he is paid for feeding prisoners.

Board of Revenue may contract with the sheriff for feeding insane persons, and may pay the sheriff a different per diem than paid him for feeding prisoners.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of June 18, 1936, with enclosure from the County Attorney.

You request my opinion:

"1. Is the feeding of juveniles and insanes properly charged to the County or State?

"2. Can the Board of Revenue enter into a contract with the sheriff to pay the sheriff a per diem for feeding juveniles and insane other than set out in the law regulating the feeding of prisoners approved September 6, 1927, amended and approved July 10, 1935."

Answering the first part of your first question, it is my opinion that the expense incurred in feeding juveniles committed to the county jail, should be charged against the County and not the State.

A juvenile is not a prisoner in the general and accepted sense, but is a ward of the county, and, therefore, the law as to feeding "prisoners" has no application to such juvenile, the expense for the maintenance and care of juveniles are proper charges against the county, under authority of Section 3529 of the 1923 Code of Alabama, as amended by Section 2 of Act No. 315, H. B. 744, approved June 29, 1931 (General Acts 1931, p. 356) a part of which is as follows:

" * * * All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expenses of maintenance

and care of children that may be incurred by order of the court in carrying out the provisions and intent of this chapter, shall be valid charges and preferred claims against the county and shall be paid by the county treasurer when itemized and sworn to by the creditor or other person knowing the facts in the case, and approved by the Judge."

Biennial Report of Attorney General, 1930-1932, p. 571; Biennial Report of Attorney General, 1926-1928, pp 540 and 587.

Answering the last part of your first question, I wish to refer you to a part of Section 7287 of the 1923 Code of Alabama, which is as follows:

"Services in relation to persons of unsound mind, the same fees as are allowed for similar services in other cases, to be paid out of the county treasury, if such persons have no estate."

In my opinion the section, supra, places the liability for feeding insane persons on the county, provided the insane persons have no estate from which the costs may be collected.

Opinions Attorney General, 1935, Book 3-A, p. 235 (Office Edition).

Opinions Attorney General, 1935, Book 2-A, p. 7 (Office Edition).

Copies of the above opinions are enclosed for your information.

Biennial Report of Attorney General, 1926-1928, p. 274.

Answering the first part of your second question, in my opinion the Sheriff should be paid the same per diem for feeding juveniles as he is paid for feeding prisoners.

I refer you to Section 3558 of the 1923 Code of Alabama, which is as follows:

"Section 3558. Officer serving process, etc., under juvenile courts; costs and fees of. — All officers serving process from juvenile courts, or feeding prisoners committed by or held for or under such courts, shall receive the same costs, fees and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to process issued by the circuit courts or courts of like jurisdiction, and for feeding prisoners committed by circuit courts or courts of like jurisdiction."

Answering the last part of your second question, in my opinion the Board of Revenue may contract with the sheriff for feeding insane persons, and may pay the sheriff a different per diem than paid him for feeding prisoners.

I refer you to Section 2798 of the 1923 Code of Alabama, which is as follows:

"Section 2798. Compensation to persons caring for insane paupers. — The court of county commissioners and county boards of revenue shall provide a schedule of fees in their respective counties, to be paid out of the county treasury on their order, to the county officers, or any person duly deputized by such officers, to temporarily provide for the care and maintenance of any person alleged to be insane, when such person has no means of paying such expense, pending an investigation into the mental status of such alleged insane pauper, before the probate judge of such county. Such judge shall, at the same time hear evidence and decide therefrom the question of the ability of such alleged insane pauper to pay such expenses."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 20, 1936

Hon. D. A. McGregor,
Register Circuit Court of Walker County,
Jasper, Alabama.

Court costs — When a juvenile delinquent appeals from a judgment of the Juvenile Court to the Circuit Court, in Equity, as provided for by Section 3538 of the 1923 Code of Alabama, and the judgment is affirmed, the State is not liable for the court costs that have accrued.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 14, 1936, in which you state:

"Section 3537 of the 1923 Code of Alabama provides for the detention and commitment of children, juvenile delinquents and triable by the Judge of the Juvenile Court.

"Section 3538 of the 1923 Code provides for appeal to be taken by the juvenile delinquent to the Circuit Court and there to be tried by the Judge of said Court sitting as a Court of Equity.

"Recently two of these juvenile delinquent cases were appealed to this the Circuit Court of Walker County, Alabama in Equity. These two appeals were permitted by the Judge of the Juvenile Court by the juvenile delinquent entering into bond signed only by the delinquent and without any additional surety.

"These two juvenile delinquent cases were tried in this Court on the appeal by Hon. R. L. Blanton, Judge of said Circuit Court, in Equity, on

the 8th day of April, 1936 and he is as such Judge of the Circuit Court adjudged the defendants juvenile delinquents and wards of the State of Alabama and committed them to the Alabama Boys' Industrial School.

"These two cases Numbers 233 and 234 are entered upon the dockets of this Court against these two juvenile delinquents separately with the State of Alabama as complainant in each of the cases.

"The cases having been disposed of, and no bond with surety having been given by the delinquent on appeal, there is no one to pay the cost of this Court on such appeal.

You request my opinion:

"Please advise me whether or not the State of Alabama should be taxed with the payment of the court cost in this Court which has accrued by reason of said appeal and if the State of Alabama should be charged with the payment of the cost then please advise to whom I should render a bill for payment.

"I understand that I cannot under the law issue an execution against the State of Alabama, and I also understand that where the State of Alabama institutes a proceeding of this character, the trial tax of \$3.00 due to the State and County would not be paid by the State notwithstanding the State did or would pay the balance of the cost in the case. This rule under an opinion rendered by former Attorney General of Alabama.

"Kindly let me have your opinion on this question of taxing and payment of cost."

In my opinion your question should be answered in the negative.

The State does not pay any costs that are specially provided for by statute. — **Quarterly Report of the Attorney General, Vol. 11, p. 10.**

In the case of *Green County v. Hale County*, 61 Ala. p. 72, the Supreme Court of Alabama said the State is not chargeable with costs created in the prosecution of a person indicted for a violation of law, whether the defendant be convicted or acquitted, unless it has consented or provided by statute that they may be charged against it.

In the case of *State, ex rel. Pollard v. Brewer*, 59 Ala., 130, the Supreme Court of Alabama said:

"The statutes which allow fees to sheriffs and other officers for services rendered in prosecutions by the State for criminal offenses, and in executing judgments rendered in such prosecutions, are statutes which give costs and must be strictly construed — they can not be extended beyond their letter. It is a principle of the common law, that such statutes, (as it is in reference to all general statutes) do not extend to, and embrace the sovereign, subjecting him to disability, or to liability, unless

it is so expressly provided. 'The king (and any person suing to his use) shall neither pay nor receive costs', was the rule at common law; and the general words of statutes giving costs, did not include the sovereign. The same principle has been applied to the governments, State and Federal, in this country in civil and criminal causes. Those who accept public offices which require them to render services to the State, must take the office cum onere — the rendition of such services gratuitously, unless by express statutory provision, compensation is fixed, and an express liability for its payment imposed on the State."

As I have been unable to find any statute authorizing the State to pay the costs in cases appealed under Section 3538 of the 1923 Code of Alabama, it is my opinion that the costs should not be taxed against the State of Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 22, 1936

Hon. J. R. Copeland,
Judge of Probate, Blount County,
Oneonta, Alabama.

1. County Farm Agents in Alabama are selected in a manner mutually agreed upon by the United States Secretary of Agriculture and the State Agricultural College of Alabama, and Courts of County Commissioners, Boards of Revenue or like governing bodies have no authority whatever in their selection, and are without authority to discharge them after they have been selected.

2. When an election is held in a County under the provisions of Act No. 144 (General Acts 1935, p. 180) approved June 21, 1935, and the result of the vote at said election is in favor of an appropriation by the County for the purposes mentioned in said Act, then the Court of County Commissioners, Boards of Revenue or like governing body of the County must make an appropriation for this purpose in the amount authorized at the election, and it has no discretion in the matter.

3. The funds so appropriated, should be paid out, from time to time, on warrants drawn by the Judge of Probate, based upon valid and proper claims against said appropriation, which have been presented to, and audited and allowed by, the Court of County Commissioners, as provided by Section 224, Code of Alabama, 1923.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

This acknowledges receipt of your letter of January 18, 1936, and subsequent letters pertaining thereto.

Your letter of January 18, 1936, follows:

"In accordance with an act of the Legislature No. 144, House Bill No. 314, approved June 21, 1935, on an appropriation under the terms of the above mentioned bill, and as a result of said election a majority voted in favor of the appropriation, said appropriation to be used for the exclusive purpose of assisting in employing county farm and home demonstration agents in cooperation with the Extension service created under an Act of congress of the United States approved May 8th, 1914, and generally known as the "Smith-Lever Act". At the regular December term 1935 of the Commissioners Court of said County an order was made and entered on the minutes of said Court granting the appropriation as voted..

"At the August term 1935 of the Blount County Commissioners Court an order was made and entered on the minutes of the court discharging the county farm agent and the vacancy ordered to be filled by a suitable qualified person to be selected by the court, and no agent has as yet been selected by the court to fill the said vacancy, and in granting the above appropriation referred to, no one was designated to whom the money should be paid.

"Would I be authorized under the above circumstances without an order of the Commissioners Court designating to whom the money should be paid to pay out the appropriation? If not, who has the authority to designate or employ the county farm and home demonstration agents."

The Act of the Federal Government which set up the Cooperative Extension Service is commonly known as the Smith-Lever Act and was passed on May 8, 1914. This Act is found in U. S. C. A. Title 7, Section 341-348, inc.

Section 342 of said Act provides in part as follows:

" * * * and this work shall be carried on in such manner as may be mutually agreed upon by the Secretary of Agriculture and the State Agricultural College or Colleges * * * ."

Nowhere in the Act is there any specific provision as to how county farm agents shall be selected or appointed. The only provision of the State law on this subject is found in Section 3 of Act No. 26, General Acts 1911, at p. 14, approved February 11, 1911, which reads:

"Section 3. That local agents who shall have charge of the farm demonstration work in the respective county or counties of the State of Alabama where the work is in cooperation with the United States Department of Agriculture shall before appointment be jointly recommended for appointment by the board of agriculture, provided for by this act and the State agent of the farm demonstration work. If the United States Department of Agriculture withdraws its farm demonstration work from any county or counties of the State of Alabama the local agent for the demonstration work may be appointed by the board of agriculture herein provided for."

This provision is codified in Section 3 of Article 41 of the 1923 Agricultural Code, which is Act No. 376, (General Acts 1923, at page 399), approved Sept. 27, 1923, as follows:

"Section 3. The County Farm Demonstration Agents who shall have charge of the farm demonstration work in the respective County or counties of the State of Alabama, shall, before appointment, be jointly recommended for appointment by the State Board of Agriculture as created in Article 2, Section 1, of this Act, and the State Agent of Farm Demonstration Work in Alabama."

However, subsequent to this time, the Legislature adopted the Agricultural Code of 1927, and this Code, as subsequently amended by the Legislature, is the existing Agricultural Code.

Sections 19 and 20 of the Agricultural Code of 1927, *supra*, read as follows:

"19. Purpose of Article — To prevent conflict or overlapping of work by the agricultural agencies of the State, to coordinate and secure the best possible relations of such agencies in the work of advancing agriculture in Alabama, it is the purpose of this Article to: Define the recognized agricultural functions of the state and assign to the Department of Agriculture and Industries its proper work."

"20. Agricultural Functions of the State. — The Agricultural functions of the State are a college teaching function for the education of young men and women, a research or experiment station function, an extension teaching function, and an executive or law enforcing and regulatory function."

Extension work is defined by Section 22 of the 1927 Agricultural Code, *supra*, in this manner:

"22. Extension Work. Extension work is necessarily a corollary of experiment station work and agricultural college teaching and as applied to these functions has reference to making available to all the people scientific and practical agricultural and home making instructions and information and is as authorized by the Smith-Lever Extension Act of Congress in 1914 and defined in Section 2 thereof, as follows:

"That cooperative agricultural extension work shall consist of the giving of instruction and practical demonstration in agriculture and home economics to persons not attending or resident in said colleges in the several communities, and imparting to such persons information on said subjects through field demonstrations, publications, and otherwise; and this work shall be carried on in such manner as may be mutually agreed upon by the Secretary of Agriculture and the State Agricultural College or colleges receiving the benefits of this Act."

"As applied to these functions, Extension work is also the teaching of the fundamental principles which underlie successful cooperative organization and marketing of farm products. Extension work may also

embrace the giving of information about regulatory or administrative law or the regulation and the necessity for an advantage of their observance when such giving of information is an incidental and secondary consideration to the teaching of the Extension problem at hand."

While Section 25 of said Code is as follows:

"25. Field Work of Department. — The Department of Agriculture and Industries, under this plan, shall confine its activities to the regulatory, control and administrative work, including the necessary presentation of this work to the public."

These Sections evidence a clear intention on the part of the Legislature to define the recognized agricultural functions of the State, and to confine each Agricultural Department to its proper field of work. The Department of Agriculture and Industries is given no supervision or control whatever over agricultural extension work. This work is left entirely to the Extension Department. Nowhere in the 1927 Agricultural Code is there any provision relating to the employment of county agents. The provisions of the 1911 Act, *supra*, and the 1935 Agricultural Code, *supra*, in this regard, was omitted from the 1927 Agricultural Code. Therefore, I am constrained to hold that the same are repealed thereby and that there is no existing State law on this subject today. The 1927 Agricultural Code is a new enactment of the Legislature completely covering the entire field of the 1923 Agricultural Code. It is a well known rule of statutory construction that a subsequent legislative act on the same subject and completely covering the entire field of a former act, supersedes and repeals the provisions of the former Act. The only authority which Courts of County Commissioners or Boards of Revenue or like governing bodies have in regard to Agricultural Extension work is that given by Subsection 18 of Section 6755 of the Code of Alabama, 1923, which follows:

"The Court has authority. 18.—Where State or Federal authorities have taken up the work of farm demonstration, or the organization of farm life clubs for the promotion of agriculture, to appropriate for aiding in such work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary."

This Section gives to the Court of County Commissioners, Boards of Revenue or like governing bodies discretionary authority to appropriate such sums to aid in this work as it "may deem adequate and necessary."

Under this authority, the Court might, in the exercise of its discretion, refuse to appropriate any sum for this purpose or it might discontinue an appropriation already made. But this does not give to the Court any authority whatever to employ county farm agents, to approve or disapprove those persons selected for these positions in a manner mutually agreed upon by the United States Secretary of Agriculture and the State Agricultural College of Alabama, or to discharge them after they have been so selected. It is a well known rule that Courts of County Commissioners, Boards of Revenue or like governing bodies are courts of strictly limited jurisdiction and can exercise only such powers as are conferred upon them by statute.

I am advised that the practice of the Agricultural Extension service in selecting county farm agents which has been "mutually agreed upon" by the United States Secretary of Agriculture and the State Agricultural College of

Alabama, is that the State Extension Director nominates persons to fill these positions, always endeavoring, I understand, to select persons to meet with the approval of the Courts of County Commissioners, Boards of Revenue or like governing bodies and the farm people who are to be served and that the names of these persons so nominated are sent to the United States Director of Extension for his approval. When they are approved by him, they then become the County Farm Agent for the respective counties for which they were nominated, and they serve at the pleasure of the State Director and the United States Director of Extension.

It is my opinion that this method of selection is in accordance with the provisions of Section 342 of the Smith-Lever Act, *supra*, and is not in conflict with any statute of the State of Alabama.

Since, as above stated, there is no statutory authority giving courts of county commissioners, boards of revenue or like governing bodies any power in this matter, it is my opinion that the county agents are properly selected as set out above, which is the manner mutually agreed upon by the United States Secretary of Agriculture and the State Agricultural College of Alabama, and that Courts of County Commissioners have no authority whatever in the matter and are without authority to discharge persons so selected for these positions.

Therefore, the Court of County Commissioners of Blount County had no authority to make an order at its August Term, 1935, discharging the County Farm Agent of Blount County and ordering the vacancy filled by a suitable qualified person to be selected by the Court.

Under the authority given Courts of County Commissioners, Boards of Revenue or other like governing bodies by subdivision 18 of Section 6755 of the Code of 1923, *supra*, the Court of County Commissioners of your County, at its August term, 1935, could have discontinued the appropriation made by it, to aid in Agricultural Extension Work in the County. However, you state that an election was held in your County on November 12, 1935, in accordance with the provisions of Act 144, (General Acts 1935, p. 180), approved June 21, 1935, which resulted in a majority vote in favor of an appropriation to be used for the purposes mentioned in Act No. 144, *supra*. After this election was held, the Court of County Commissioners of Blount County, no longer had any discretion as to whether or not it would make an appropriation for this purpose. It had to make the appropriation in the amount authorized at the election, and your Court of County Commissioners properly made an order at its December Term, 1935 granting the appropriation for this purpose which was voted at the November 12th election.

You ask if you would be authorized under the above circumstances, without an order of the Commissioners Court designating to whom the money should be paid, to pay out the appropriation, and further who has the authority to designate or employ the County Farm and Home Demonstration Agent.

I have already answered the latter part of your question, and have advised you how County Farm Agents should be appointed. The same method of selection applies to Home Demonstration Agents.

In answer to the other part of your question, I advise that the money appropriated by the Court of County Commissioners in accordance with the election held on November 12, 1935, should be paid out, from time to time, upon warrants drawn by you, based upon valid and proper claims against said appropriation, which have been presented to, and audited and allowed by, your Court of County Commissioners, as provided by Section 224 of the Code of Alabama, 1923.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 24, 1936.

Hon. R. H. Williams,
Judge of Probate,
Marshall County,
Guntersville, Ala.

License—Veterans exemption—Veterans properly qualified for exemption under Act No. 494, General Acts 1935, page 1057, approved September 13, 1935, are entitled to the exemption provided in Act No. 494, supra, from the licenses levied by Schedules 146 and 147 of the 1935 Revenue Act unless they are operating what are commonly termed "rolling stores".

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of May 27, 1936, as follows:

"Please advise me whether a veteran with 25% or more disability would be entitled to exemption under Schedule 146 Revenue Code 1935, that is where he operates as a transient vendor or peddler using a vehicle other than a motor vehicle.

"Also please advise whether a veteran would be entitled to exemptions under Schedule 147 in view of the last paragraph which reads 'Provided further, the taxes herein levied are not subject to any specific exemption.'

"I can find no opinion covering these matters in previous reports."

It is my opinion that a veteran who is properly qualified under Act No. 494 General Acts 1935, page 1057, approved September 13, 1935 is entitled to the exemption there granted from the licenses levied under Schedules 146 and 147, 1935 Revenue Act, provided he is not operating what is commonly known as a "rolling store". For your information, I call your attention to an opinion of this office addressed to Hon. D. E. Laslie, Judge of Probate of Tuskegee, Alabama, dated October 25, 1935, Quarterly Report of Attorney General, Vol. 1, page 133, which holds that a war veteran engaged in the

business of what is commonly known as a "rolling store" is not entitled to any exemption whatever from license taxes. See also opinion to Hon. L. W. Price, Judge of Probate, Conecuh County, Evergreen, Alabama, under date of March 4, 1936, Quarterly Report of Attorney General, Vol. II, page 314, which holds to the same effect.

However, this office has also held that the Veterans Exemption Act referred to above, is applicable to persons engaged in peddling. For opinions in this regard, I call your attention to an opinion rendered to Hon. N. P. Tompkins, Judge of Probate, Colbert County, Tuscumbia, Alabama, under date of December 9, 1935, Quarterly Report of Attorney General, Vol. I, page 231, and to Hon. Roy Sanderson, Judge of Probate, Marion County, Hamilton, Alabama, under date of February 26, 1936, Quarterly Report of Attorney General, Vol. II, page 214.

Therefore, I advise you that veterans properly qualified under the Veterans Exemption Act, supra, are entitled to exemption from licenses levied under Schedules 146 and 147 of the 1935 Revenue Act unless they are engaged in the business of operating what is commonly known as a "rolling store".

The fact that Schedule 147, supra, provides in the last paragraph that the taxes therein levied are not subject to any specific exemption and that Section 368½ of the 1935 Revenue Act provides that exceptions and exemptions from license or privilege taxes levied by this Act which are granted by this Act are declared to be exclusive, does not operate to deny a properly qualified veteran the appropriate exemption under Act No. 494, supra, since it was passed subsequent to the date of passage of the 1935 Revenue Act and repeals the provisions of the 1935 Revenue Act insofar as they conflict with its provisions.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Melvin Hutson, Solicitor,
8th Judicial Circuit,
Decatur, Alabama.

July 24, 1936.

Act No. 56, approved March 26, 1936, amending Section 6667 of Code, held not to affect the time and manner of solicitor making reports under Section 5502 of Code.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I wish to acknowledge receipt of your letter of June 8, 1936, which is as follows:

"Since the legislature abolished the terms of court, when shall we make reports? Shall we make them at the end of the year or semi-annually, as we have been heretofore doing?"

In my opinion the Act in question does not in any way affect or change the law as heretofore existing in Section 5502, with respect to the time and manner of filing reports.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 24, 1936.

Hon. Frank M. Johnson,
Judge of Probate,
Winston County,
Double Springs, Ala.

License—Fur dealers and fur catchers—

1. Persons paying fur dealer's license may hire other men to buy furs for him provided such men do not maintain or buy from an established place of business separate and apart from the place of business for which the employer has paid fur dealer's license; and provided further that purchases so made by them are confined to the county in which the employer has purchased his license.

2. A fur catcher must first procure the fur catcher's license provided by Section 10 of Act No. 383, General Acts of 1935, page 813 approved September 9, 1935, before he can catch fur bearing animals and must also purchase the tags provided by said section and place them on the furs, skins or pelts which he sells or offers for sale before he sells or offers the same for sale.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of sometime ago, in which you request my opinion on the following statement of facts:

"A purchases a fur dealer's license. Can he hire other men to buy furs for him or shall each person be due a fur dealer's license?"

"A also purchases a fur catcher's license in order that he may buy tags for his furs. Can he not place the tags on furs after they are brought to his office and sold to him and charge the catchers for the tags, instead of the catcher purchasing the tags and placing the same on the furs?"

Schedule 71 of the 1935 Revenue Act reads as follows:

"Each person dealing in hides or furs, whether principal business or not: In counties of one hundred thousand inhabitants or over, twenty-five dollars; in counties of forty thousand inhabitants and less than one hundred thousand inhabitants, twenty dollars; in counties of less than forty thousand inhabitants, fifteen dollars. Provided, however, that the license herein fixed shall not apply to persons dealing in cattle, sheep, goat or horse hides."

It is my opinion that a person who procures a license under this schedule may employ other persons to buy furs for him without the necessity of these persons also paying the license provided by this schedule provided that such buyers do not maintain or buy from an established place of business separate and apart from the place of business of their employer for which the fur dealer's license has been paid; and provided further that the purchases so made by them are confined to the county in which the license of their employer was issued. Of course, if such persons engage in the business of a fur dealer by maintaining and buying from an established place of business separate and apart from the place of business for which their employer has paid the license levied by Schedule 71, *supra*, then they would be subject to the same license as their employer.

For your information I call your attention to the fact that there is also levied on persons engaged in the business of dealing in furs a license provided by Section 18 of Act No. 383, General Acts, 1935, page 813, approved September 9, 1935. This section provides, however, that a person who takes out a license under this section is entitled to have the amount of the license required to be paid to the State under Schedule 71 of the General Revenue Act, which is the schedule levying a license on fur dealers, deducted from the amount of the license required to be paid by this section. This section refers to Schedule 73. This is very obviously a clerical error. It is very clear that it was the intention of the Legislature that it should refer to Schedule 71 of the 1935 Revenue Act, since this is the schedule of the Revenue Act which levies a license on this same business.

Therefore, a person wishing to engage in the business of a fur dealer would have to comply with the provisions of Section 18 of Act No. 383, *supra*, as well as the provisions of Schedule 71 of the 1935 Revenue Act, *supra*, before he would be entitled to engage in such a business.

Section 10 of Act No. 383, *supra*, is the Act which levies a license on fur catchers and provides for tags to be placed on each fur, skin or pelt before the same is sold or offered for sale. I call your attention to the following excerpt from Section 10, *supra*:

"In addition to the license provided in this section, the holder thereof shall be required to procure from the Probate Judges or other persons authorized to issue hunting licenses, stamps or tags to be furnished by the commissioner to those issuing hunting, fishing and fur licenses which stamps or tags shall be securely attached to each fur, skin or pelt sold or offered for sale."

This makes it very clear that the person who catches the animal whose fur, skin or pelt is offered for sale must purchase and place the stamp or tag provided by Section 10 of Act No. 383, supra, on the fur, skin or pelt before the same is sold or offered for sale.

Therefore, it is my opinion that a fur dealer could not purchase these stamps or tags and place them on furs, skins or pelts which he buys from fur catchers, but the same must be bought and placed on the furs, skins or pelts before they are sold or offered for sale by the fur catcher himself who catches the animals whose furs, skins or pelts are sold or offered for sale.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 24, 1936.

Hon. Theo. Hurt,
Clerk of Circuit Court,
Marion, Alabama.

1. When appellant makes a supersedaes bond and appeals his case to the Supreme Court and is there successful the supersedaes bond cannot be made liable for costs.

2. Section 7805, Code of Alabama of 1923 provides that where the plaintiff obtains judgment against the defendant for damages and costs and an execution for them is issued against defendant and returned "no property found" then the plaintiff becomes liable for the costs which accrued at his instance but this cannot be made to apply to the defendant where the statute only provides that it applies to the plaintiff.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 1, 1936, in which you request my opinion as follows:

"A brings suit against B in this Court and gets judgment. B appeals and gives supersedeas bond.

"The Supreme Court reverses and remands the case and in their certificate of reversal the Costs of appeal and in the Court below are taxed against the appellee.

"Execution is issued against the appellee, Mr. A and is returned "no property found".

"Can I as Clerk issue execution against B and his sureties on the supersedeas bond for the costs of appeal? Can I issue execution against B for the costs incurred by him in this Court?"

It is my judgment you cannot issue execution against B and the sureties on his supersedeas bond for the reason that when B was successful in his case in the Supreme Court the terms of the supersedeas bond become inoperative against B and his sureties. This is true in the case for two reasons: All the costs both in the Circuit Court below and on appeal are adjudged against A by the Court and hence B being successful in his appeal the supersedeas bond has served its purpose and becomes inoperative. The sureties on the bond are not liable beyond its terms and penalties. *Seaman's v. White*, 8 Ala. 583. My answer to your second inquiry is in the negative. This office has held that the provisions of Section 7805 Code of Alabama of 1923 only apply to the plaintiff and cannot be made to apply to the defendant. This section is as follows:

"7805. WHEN AGAINST PLAINTIFF FOR HIS COSTS. — When execution against the defendant is returned "no property found" execution may issue against the plaintiff, in the name of the clerk or the register of the court, for all the costs created by him in obtaining his judgment."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 27, 1936.

Hon. W. W. Ramsay,
Associate Member,
State Tax Commission,
Montgomery, Alabama.

License—Coal and coke dealers—

Under Schedule 36.2 of 1935 Revenue Act persons engaged in selling, distributing, or hauling or delivering coal or coke by truck or other vehicle, either as dealer, employee, agent, broker, sales agent or mining company who sells, or hauls, or delivers direct from mine or plant to consumer must pay the license therein levied in each county in which it sells, distributes, hauls and delivers coal or coke in this manner.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of sometime ago which follows:

"Please advise as to liability of coal and coke dealers for licenses in counties other than home office under Schedule 36.2.

"The case in question is a trucker residing and buying coal in Winston County and selling and delivering in Lauderdale County. Is this man due a license in Lauderdale County?"

Schedule 36.2 of 1935 Revenue Act reads as follows:

"Each person, other than those qualifying under Section 1 of this Schedule, engaged in selling, distributing, or hauling, or delivering coal or coke by truck or other vehicle, whether as dealer, employee, agent, broker, sales agent or mining company, who sells, or hauls or delivers direct from mine or plant to consumer shall pay a privilege license on the first truck or other vehicle used in said business of fifteen dollars (\$15.00), and on each additional truck or vehicle \$3.00 but the provisions of this schedule shall not apply to persons whose inventory and sales are in quantities of not more than one ton, and in no event shall this license be issued for less than one year, such license to be in addition to the regular motor vehicle license. Each such person shall register each truck or other vehicle so used in such business in the county in the office collecting and issuing license. When such trucks are registered and all license requirements complied with, a tag as above described shall be issued for each truck or other vehicle, and such tag shall at all times be displayed next to the regular license tag on all trucks or other vehicle in such business."

Sub-paragraph (a) of Section 350 of this Act provides:

"Whenever a license is levied in this Act, there shall be collected both a State and County license for each place of business, except as specifically otherwise provided."

While sub-paragraph (b) reads:

"There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the State of fifty per cent of the State license or privilege tax, except as herein otherwise provided."

Therefore, it is my opinion that persons selling, distributing, hauling or delivering coal or coke by truck or other vehicle as dealer, employee, agent, broker, sales agent or mining company which sells, hauls or delivers direct from mine or plant to consumer must pay the State and County license by the above quoted provisions of the 1935 Revenue Act in each County in which they sell, distribute, haul and deliver coal or coke.

It is true that sub-paragraph (a), supra provides that there shall be collected both a State and County license for each place of business, and that persons engaged in the business of selling, distributing, hauling or delivering coal or coke in the manner described in Schedule 36.2, supra, do not have an **established** place of business. However, it is my opinion that they have a place of business in each County in which they **operate** in the manner described in Schedule 36.2, even though they have no **established** place of busi-

ness in any County. See opinion to Hon. W. G. Little, Probate Judge, Sumter County, Livingston, Alabama, under date of November 29, 1935, Quarterly Report, Attorney General, Vol. 1, page 255.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 28, 1936.

Hon. O. L. Andrews,
Clerk of Circuit Court,
10th Judicial Circuit,
Birmingham, Alabama.

Jurors—Compensation for jury service is limited to days actually engaged in official service as such.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of sometime ago which follows:

"Last Friday night we held a clerk in our office until 10:30 o'clock for the purpose of paying off a jury which was expected to report at any minute. This clerk after being notified that the jury was being taken to a hotel for the night left the office. For some reason or other the jury remained in the jury room and came to an agreement, and was dismissed by the jury bailiff at eleven o'clock. There being no one in the office to pay them off they returned the next morning contending for an extra days pay."

It is not entirely clear to me from this statement of facts just when the jurors mentioned therein were officially discharged. Therefore, my answer will have to be conditional.

If these jurors reached an agreement, reported their verdict to the Court and, after so doing, were discharged by the Jury Bailiff upon an order of the Court at 11 o'clock, then they completed the services for which they were summoned as jurors on that day and would not be entitled to pay for the next day, even though it was necessary for them to return to your office the next morning to receive the compensation due them.

Section 3710 of the Code of Alabama of 1923, which is the section dealing with the compensation of jurors, provides that they shall receive so much per day for each days service. It is my opinion that "service" as referred to in this section means actual attendance upon the sessions of court in the performance of the duties for which they were summoned. If these jurors performed no such service on the day on which they returned to your office

to receive the compensation due them, but only returned to get their compensation, then they would not be entitled to pay for that day.

Of course, if, when the jurors reached their agreement, the Judge was not present to receive the verdict and they had to return the next morning to report their verdict to the Court and were not officially discharged by the Court until after that time, then they would be entitled to pay for that day.

Jurors are entitled to pay for each day's service, the service ending at the time they are officially discharged by the court.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 28, 1936.

Hon. Wm. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Licenses—The transfer of the license should be made simultaneously with the transfer of the business. If this is not done the purchaser is doing business without a license, is delinquent, and should be cited by the license inspector. The license inspector's citation fee of \$1.50 should be collected by the Probate Judge or Commissioner of Licenses, when the license is transferred.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of June 25, 1936, in which you state:

"House Bill 324, Revenue Section 358, Privilege Licenses are transferable.

"In case a business changes hands, must the transfer of the license be made immediately by the new purchaser? If the transfer is not made in a reasonable length of time, can he be cited by the License Inspector? If so, what fees would this office collect for the License Inspector?"

In my opinion, the transfer of the license should be made simultaneously with the transfer of the business. If this is not done the purchaser is doing business without a license, is delinquent, and should be cited by the license inspector. The license inspector's citation fee of \$1.50 should be collected by the Probate Judge or Commissioner of Licenses, when the license is transferred.

I wish to call your attention to parts of subsections (b) and (g) of Section 353 of the 1935 Revenue Act, which are as follows:

“(b) The Judge of Probate must in all cases in addition to the other penalties required to be collected by him, collect the citation fee, if any, due the License Inspector before issuing any license. * * *”

“(g) * * * All citations to delinquents shall be served by any lawful officer, or by the License Inspector, or his deputy, who shall be allowed as a fee one dollar and fifty cents (\$1.50) for each citation served, to be taxed against the delinquent. * * *”.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

July 28, 1936.

Hon. E. L. Hurst,
Judge of Probate,
Etowah County,
Gadsden, Alabama.

Taxation—Redemption

(1) Redemption as authorized by Section 291 of the 1935 Revenue Act is limited to cases where property was sold to the State prior to Jan. 1, 1935 and application for redemption is made within four years from date of sale.

(2) Under Sections 268 and 269 redemption may be made at any time before the title passes out of the State.

(3) Where redemption is made under Section 269 as amended by Acts 1935, p. 1113 interest must be collected.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 11, 1936, stating:

“Under Redemption of Lands sold to The State for taxes Section 291 of the 1936 Revenue Code a person has four years to redeem without interest or penalties:—The opinion I would like to have is, if lands sold on June 7, 1932 for 1931 taxes the time has elapsed, that is the four years are up, and there are several persons applied to Tax Commission to buy this property on which the four years have elapsed, and they send me a notice to notify the person under whose name was sold that they have sixty days to redeem.

"The question is, if I have the right to redeem after the time has elapsed, and if so, should I charge interest on the redemption, or should the owner who has failed to apply for redemption within the four years redeem through this office or should he make application to the State Tax Commission.

"Would appreciate an early opinion on this matter as I have several persons whose time has elapsed that want to redeem, that is after some other person has made application to buy from state."

It would appear from your statement that the four year period for redemption under the installment payment plan as authorized by Section 291 of the 1935 Revenue Act has expired.

Quarterly Report, Attorney General, Vol. I, p. 207,

Quarterly Report, Attorney General, Vol. II, p. 205,

Quarterly Report, Attorney General, Vol. I, p. 331,

Quarterly Report, Attorney General, Vol. II, p. 249.

Answering the inquiries contained in the second paragraph of your letter, I advise:

Section 268 of the 1935 Revenue Act authorizes the redemption of real estate sold to the State for taxes "at any time before the title passes out of the State."

The original owner therefore has a right to redeem. Such redemption is made through your office and in the manner authorized by Section 269 as amended by Act No. 526, approved Sept. 14, 1935 (Acts 1935 p. 1113).

Your inquiry as to interest is specifically answered by subsection (c) of said Amended Act.

I enclose copy of opinion to Hon. Homer Mitchell, Probate Judge of Cullman County, for your information.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 28, 1936.

Hon. R. E. King,
Tax Collector,
Mobile County,
Mobile, Alabama.

The Tax Collector, under the provision of Section 178 of the 1935 Revenue Act authorizing him to report such persons as have been over-assessed or wrongfully assessed, is not empowered to reopen and revalue property, but only is authorized to report and have allowed amounts which by virtue of clerical errors are greater than the amount of taxes actually due.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 15, 1936, in which you state:

"Please refer to Section 178 of the Revenue Laws of Alabama, Regular Session of 1935, and advise the writer if anyone has the authority to make an adjustment on an assessment where positive proof is furnished that a mistake or over-assessment has been made.

"The matter in question is as follows:—

"The Wood Printing Co. had an assessment for the years 1931-1932-1933-1934 which the former Tax Collector failed to collect and from some authority, Mr. W. A. Roberts, State Tax Commission Agent, adjusted for the years 1931-1932 and 1933, but claimed he had no authority to adjust for 1934 and 1935.

"Mr. Jesse Hogan, Attorney, who represents this concern contends that under the above Section, I have the authority to make a proper assessment, but I contend that the Tax Collector has no authority in the matter. Will appreciate it very much if you will give this your earliest attention."

Your letter calls for a construction of Section 178 of the 1935 Revenue Act and particularly the meaning to be given to the words "**over-assessed or wrongfully assessed**". This Section is as follows:

"Section 178. The tax collector shall in each year report on oath to the State Tax Commission at Montgomery, and to the court of county commissioners, or other court of like jurisdiction, at the June term thereof, a list on a form prescribed by the State Tax Commission, of the persons from whom the taxes assessed against them cannot be collected, with the amount of taxes, state and county assessed against each, which shall be termed 'list of insolvents', and a list of such persons as have been **overassessed or wrongfully assessed**, with the taxes, state and County assessed against each; which shall be termed 'list of errors in assessments', and any taxes which may be in litigation, in order that the same may be passed upon and determined by the court. The Tax Collector shall cause the said 'list of insolvents' to be published twice during the month of July following the submission thereof to the June Term of the Court of County Commissioners or other Court of like jurisdiction. Said publication shall be made in a daily newspaper printed and published in said County; if no such paper is published therein, then in a weekly newspaper published in said County; if there be neither a daily

or weekly newspaper of any sort published in said County, then he shall post said 'list of insolvents' in the Court House and in three other conspicuous places in said County and keep said posting available for the public during the entire month of July. A failure to publish said list as here required shall constitute a misdemeanor." (Emphasis ours).

The same provision substantially appeared in the Code of Alabama 1923 (1929 Compilation, Section 221) and likewise appeared as Section 213 of the General Revenue Act of 1919.

I have made a careful investigation and have been unable to find any decision of the courts specifically passing on or construing this provision. The Section will, therefore, have to be construed along with the body of the Revenue Laws of which it is a part so as to make it, if possible, a harmonious whole and so construed as not to render it contradictory and contrary to the other portions of the Revenue Laws.

The word "over-assessed" if interpreted absolutely literally might have the effect of setting up the Tax Collector as a sort of Appellate Court of final jurisdiction to pass on and change the valuations of property as made by the constituted authorities and give him the authority to change an assessment and revalue property even though the same had been finally passed on by all the assessing authorities including the Tax Assessor, the Board of Review, State Tax Commission and the Circuit and Supreme Courts of Alabama. Such a power can hardly be contemplated unless the same was specifically and clearly authorized. The Tax Collector is a clerical officer and, with the exception of a very limited authority in the matter of escapes, he is given no authority to assess and value property. His duties are clerical and administrative and not judicial.

The assessment of property is required to be made first by the Tax Assessor (Section 47). In this he is aided by the agents of the State Tax Commission (Section 48). Assessments made by the Assessor under certain conditions are reviewable by the Board of Review (Section 75). Appeals from assessments made by the Board of Review are authorized by Section 78 to be taken to the Circuit Court and from the Circuit Court to the Supreme Court.

In the matter of public utilities (Section 105 et seq.) and shares of stock (Section 13) assessments are made by the State Tax Commission, from which appeals may be made to the Circuit and Supreme Courts (Section 103).

This procedure contemplates finality in the matter of valuation leaving only the actual collection of taxes to be made by the Tax Collector.

The Tax Collector's duties are to be found in Sections 152 and 202, inclusive, and in addition he is required to collect the poll tax as provided by Sections 203-213, inclusive, and perform the duties with reference to the sale of land for taxes found in Article 8, Chapter 1, being Sections 214 et seq. With the exception of Section 189 with reference to escapes, all of the duties relate to the collection of taxes and no power of assessment and valuation is given to the Collector unless it can be said that the word "over-assessed" as found in Section 178 can carry such authority.

The matter of finality of assessments has been frequently before the Supreme Court of Alabama. In the case of *State v. Doster-Northington Drug Co.*, 196 Ala. 447, decided February 10, 1916, it was stated:

"If the state through its duly constituted officers has exercised the final power of assessment and valuation of property, the determination is in its nature judicial (citing); and, unless impeached for fraud or lack of jurisdiction, or reviewed by appellate authority, it is final * * *.

"The power of the County Tax Commissioner having been duly exercised and his findings concurred in by the taxpayer, the assessment became final after the expiration of the tax year. If the action of the County Tax Commissioner was final as to the taxpayer, it must, of necessity, have been of like binding force on the tax official.

The fact that the assessment was of escape properties for five years would not differentiate it from any other assessment or from an escape assessment for any one year assessment. If the State Tax Commission had the jurisdiction and authority to set aside this assessment on November 3, 1914, it would have like authority after the expiration of the tax year and before the payment of taxes on the given assessment to set aside any assessment made by taxpayer in the preceding year. It could not be said with reason that such power was conferred on the State Tax Commission as to all taxpayers who had not paid their taxes on October 1st, but not as to taxpayers who had paid their taxes on or before that date or before the date of the attempted revaluation. If this were the rule, owners and purchasers of property would be subjected to inconvenience, uncertainty, and changing financial obligation to the state and county.

"The reasonable construction of the power of assessment of taxes, and of the review thereof, should be to the end that a stable and uniform system prevail in the state; and so, when annulment or review is not sought within the period of the tax year, that matured assessments shall be **binding alike on the taxpayer and on the taxing authorities.**" (Emphasis ours).

This case, as pointed out, was prior to the Revenue Act of 1919. However, the Supreme Court has followed it with uniformity.

I call your attention to *State ex rel. Tallapoosa County vs. Butler*, 227 Ala. 212, 149 So. 260, decided June 8, 1933, Rehearing denied June 29, 1933, in which the Court said, *inter alia*:

"In *State v. Doster-Northington Drug Co.* 196 Ala. 447, 71 So. 427, it was declared: 'Notwithstanding the right of general and complete supervision is given to the State Tax Commission by Section 2223, Code of 1907, yet, in view of the provision of Section 2260, Code of 1907, and the other statutes, the power of the State Tax Commission to set aside valuations and assessments must be exercised before the end of the current tax year'."

In *State v. Mortgage Bond Company*, 224 Ala. 406, 140 So. 365, decided January 14, 1932, rehearing denied March 31, 1932, the Court said:

"It is a principle of taxation that where the State has once proceeded by its duly constituted agencies to the assessment and valuation of property, the determination is judicial in its nature and conclusive in result unless impeached for fraud or want of jurisdiction or reversed and set aside by some Tribunal having authority to review (citing cases, including *State v. Doster-Northington Drug Co.*)"

To the same effect is the following quotation from *Union Bank & Trust Co. v. Phelps*, 228 Ala. 236, 153 So. 644:

"When the state through its duly constituted officers exercised the final power of assessment and valuation of appellant's property, the determination was in its nature judicial, and, unless this final determination was impeached for fraud or lack of jurisdiction, or reviewed by appellate authority, it was and is final, fixing the amount of the liability of appellant for said tax, and this liability as to ascertained and fixed became due and payable on October 1st, 1932. *State Tax Commission v. Bailey et al.*, 179 Ala. 620, 60 So. 913 *Anniston City Land Co. v. State*, 185 Ala. 482, 487, 64 So. 110; 37 Cyc. 1071; *State v. Doster-Northington Drug Co.*, supra; *State ex rel. Tallapoosa County v. Butler*, *State Tax Com'r.*, 227 Ala. 212, 149 So. 101."

The *Doster-Northington* case was likewise cited approvingly in *Gay v. State*, 228 Ala. 253, 153 So. 767.

To like effect is the following quotation from *State v. Birmingham Trust & Savings Co.*, 230 Ala. 556, 161 So. 793:

"We think the statute clear and complete; we see no occasion for protracted argumentation as to its meaning. It looks to a separate and final assessment of the shares, fixing of record the tax values thereof, with the sum due to be paid by the several owners, which for convenience is paid in one sum by the Bank on their behalf. It is this completed assessment roll which construes the judgment upon which the collection of the tax is authorized (citing *State v. Doster-Northington Drug Co.*)"

All of these cases have been decided since the Act of 1919 and the Code of 1923, which include the word "over-assessed" in the same manner it appears in Section 178 of the 1935 Act. And yet, in all of them, do we find the Court holding that once an assessment becomes final, it is binding on both the State and the taxpayer after the end of the tax year.

The reasoning above quoted from the *Doster-Northington* case pointing out that if the Tax Commission had the power to review an assessment after the end of the tax year, it might be in the inconsistent position of reopening cases in which the taxes had not been paid while it did not disturb those in which the taxes happened to have been paid is particularly applicable to the suggestion that the Tax Collector may exercise judicial functions and review the valuation in cases where he thinks there has been an over-assessment (in the sense of over valuation) of property. It is particularly true as to the Tax Collector because the Section in which this word is included is that which provides at the end of the tax collection year for the Tax Collector to secure certain allowances by reasons of insolvency, taxes in liti-

gation, etc. He, therefore, apparently would be in the position of reviewing all unpaid assessments while not disturbing those which happened to have been paid and this, notwithstanding the fact that the tax assessment year had long since closed and at the time of making his report the delinquent date for the payment of taxes had long since passed.

Reading this provision along with the other body of the law and the holding of the Court that an assessment once made final is binding both on the State and the taxpayer, I am of the opinion that the word "over-assessed" cannot be construed so as to authorize the Tax Collector to re-value property which has been valued and assessed by the proper authorities and the tax year has closed. In fact, except in the matter of escapes, as pointed out, I find no authority for the Tax Collector to assess and value property whatever. To give such a meaning to the word "over-assessed" would render practically nugatory other provisions of the law for the final assessment and valuation of property which are set out in detail and in extenso and construing which our Supreme Court has said makes a final and binding assessment both on the State and on the taxpayer.

The problem thus confronts us as to giving a proper and reasonable meaning to the word "over-assessed" as used in Section 178. It is to be noted that this word is included in the Section providing for the report by the Tax Collector to the State Tax Commission and to the Court of County Commissioners the following items:

1. The "list of insolvents".
2. A "list of such persons as have been over-assessed or wrongfully assessed, which is termed 'list of errors and assessments'", and
3. "Taxes in litigation".

Following Section 178 is Section 179 authorizing the Court of County Commissioners "to examine such list and ascertain * * * what taxes contained in the list of errors and assessments should not have been collected by him by reason of such errors." From reading the whole of these two Sections, it is clear I think that the words "over-assessed" or "wrongfully assessed" are used in practically the same sense and that the only error or errors which the Tax Collector would be authorized to correct are those of a clerical nature. If the rate of taxation was \$2.00 per \$100.00 and the Assessor had erroneously calculated it at \$2.25 per \$100.00 such an error would be clerical and the Tax Collector would be authorized to secure allowance for the excess. Likewise if multiplying the valuation by the correct rate the result was an amount in excess of that properly due, the Tax Collector would be authorized to have an allowance for the excess over the correct amount. There might be a possible case where the Assessor included property not in existence and which fact affirmatively was shown on his records, thus making a greater amount of taxes due than were legally payable. In such cases, however, the error must be clerical and not judicial in order for the Tax Collector to secure any allowance therefor.

I conclude, therefore, that the word "over-assessed" as used in Section 178 does not authorize the Tax Collector to revalue property but merely au-

thorizes the correction and allowance for clerical errors by which the amount of taxes shown to be due is greater than are legally payable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

July 31, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Where defendant is convicted for petit larceny and sentenced to hard labor to cover the fine, and an additional term at hard labor for punishment, but the Court through inadvertence or neglect fails to sentence the defendant for costs the State is not liable for same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 25, 1936, in which you request my opinion as follows:

"Section 4908 of the Code of 1923 makes a hard labor sentence in petit larceny cases mandatory and fine in addition at the discretion of the Court.

"In a petit larceny case tried in County Courts under affidavit and warrant and sentenced to one year hard labor for the county, could the State legally pay the costs, no additional sentence for costs being imposed?"

My answer to your first inquiry is in the negative. Petit larceny under all conditions is a misdemeanor and the defendant can only be sentenced to hard labor or imprisonment in the county jail when convicted of this offense. Such sentence should be to serve so many days to pay the fine and an additional term to satisfy the hard labor sentence if hard labor sentence is imposed, and then an additional number of days to pay the costs. All sentences for petit larceny should and must as a matter of law carry the costs, and when the court refuses or neglects to sentence for costs the State is without authority to pay such costs for the reason that through the neglect or inadvertence of the trial judge in sentencing the defendant for costs the State does not get the benefit of the convict's labor for the same, and it would be without reason to say the State must pay something for nothing. Before there is any obligation on the part of the State to pay such costs, there must be a sentence to hard labor covering same.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 3, 1936.

Hon. Henry Naish,
Treasurer of Shelby County,
Columbiana, Alabama.

Counties—may pay for furnishing right of way for State road out of General Fund although a county has reached its constitutional debt limit.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of July 29, 1936, which is as follows:

"The State Highway Department of Alabama is engaged in widening, improving and resurfacing the Montgomery Birmingham Highway through Shelby County and requires said County to furnish rights of way for such improvements.

"Shelby County is above its constitutional debt limit as revealed by recent report of State examiners.

"Under the status of the County's indebtedness aforementioned, I will be glad to have you advise me if the County may pay for these rights of way out of its General Fund."

I am of the opinion that your inquiry should be answered in the affirmative.

In dealing with the question of the payment of obligations by a county which had reached its constitutional debt limit our Supreme Court in the case of *Brown v. Gay-Padgett Hdw. Co.*, 188 Ala. 423, 66 So. 161 stated as follows:

"* * * Legitimate county debts or obligations are of two classes: (1) Those which are prescribed and imposed by law, and are purely involuntary as to the county; (2) those which are merely authorized by law, and are assumed by the county with some measure of discretion, at least as to time and amount.

"Section 153 of the Code makes a number of specified county obligations preferred claims against the general treasury, and requires the treasurer to set aside sufficient funds for their payment. We think also that, by necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligations, those involuntary obligations which are fixed and imposed by law must be regarded as preferred claims of a second class, which are entitled to precedence over the general and voluntary obligations of the county.

"As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its ordinary current obligations incurred during and for the year for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred claims; and that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to the Constitution and are therefore invalid as to their payment."

"We think it is clear, also, that such a county cannot borrow money even to provide funds for current and necessary municipal expenses.
* * *."

The question then presents itself as to whether or not the furnishing of the right of way in question by the county is a voluntary or an involuntary obligation.

Section 31 of the Highway Act of 1927 (General Acts, 1927 p. 358) provides as follows:

"Section 31. (1331) RIGHT OF WAY FOR ROADS; HOW ACQUIRED. The right of way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the County in which such road is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right of way, the State through the State Highway Department shall have authority at the expense of the county to acquire such right of way, either by purchase or by the exercise of the right to eminent domain in condemnation proceedings, as is provided for under the laws of this State."

This section places upon the county the duty to acquire the right of way.—**Mobile County v. Barnes-Creary Supply Co.**, 225 Ala. 127, 142 So. 72. Such, in my opinion, is an obligation prescribed and imposed upon the county by law and is purely involuntary as to the county. Therefore, same may be paid by the county out of its General Fund, although it has reached its constitutional debt limit, from anticipated revenues under the rules set out in the case of *Brown v. Gay-Padgett Hdw. Co.* supra.

In this connection I also wish to refer you to an opinion of this office found in Quarterly Report of Attorney General, Vol. II, p. 82, which holds that the cost of furnishing rights of way by a county may be paid from the Road and Bridge Fund or from the Gasoline Fund.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 4, 1936.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Municipal Elections—

1. The term "municipal office" as used in Act No. 424, General Acts 1935, page 894, approved September 13, 1935 which is commonly known as the Kirby Election Act applies to offices of cities and towns.

2. Said Act held to apply to municipal elections held at a time other than statewide general elections.

3. Said Act held to have no application to municipal elections held in years in which no state-wide primary election is held.

4. The provision of said Act requiring candidates for municipal office nominated by petition of electors to file their petitions and their declaration of candidacy prior to the first Tuesday in May of the year in which a state-wide primary election is held to be directory and failure to comply with same held not to prohibit proper officer from causing name of such candidate to be printed on the ballot.

5. Candidates for town and city offices should file with the Mayor or other like officials of the city or town and not with the Judge of Probate of the county in which the city or town is located.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I am in receipt of your letter of recent date making several inquiries concerning Act No. 424, General Acts 1935, page 894, approved September 13, 1935, which is commonly known as the Kirby Election Act. I have also received letters from a number of other officials making inquiries in regard to this Act. I shall here attempt to answer all inquiries in this regard that have been propounded to this office to date.

The following inquiries have been made:

1. Is Act No. 424, supra, constitutional?
2. Doth the term "municipal office" as used in said Act apply to offices of cities and towns or to offices of political sub-divisions of the county?
3. Does said Act apply to municipal elections held at a time other than state-wide general elections?

4. Does said Act have any application to municipal elections held in a year in which no state-wide primary election is held?

5. What effect, if any, does the last sentence of said Act have on the rest of the Act with reference to municipal elections, inasmuch as "municipal" is left out of said last sentence?

6. Should candidates for town and city offices file their petitions with the Judge of Probate for the county in which the city or town is located or should the same be filed with the Mayor or other like official of the city or town?

First, I wish to call your attention to an opinion of this office addressed to Hon. Howell Turner, Secretary of State, Capitol, under date of June 18, 1936, which is the only opinion heretofore rendered by this office on Act No. 424, supra. This opinion held:

"In my opinion, Acts 1935, page 894 (which is a substitute for Code of 1932, Section 462, as amended by Acts 1935, page 237) is reasonably clear and workable. By the last enactment, the Legislature evidently intended to lay down a different rule to govern each of the two classes of nominees dealt with, namely (1) those nominated as candidates for county or municipal offices by the caucus, convention, primary election, etc. of a political party; and (2) those nominated as candidates for any office, Federal, State, District, County or Municipal by a petition of electors. This latter class is commonly understood in Alabama to mean "independent candidates". Of course, as to candidates for Federal, State or District offices nominated by party machinery, certification to the Secretary of State is governed by Section 647 and certification by that official to the several Probate Judges is governed by Section 648 of the Code of 1923.

"The last Act simply provides that, as to those nominated for county or municipal offices, by party machinery, certificate of nomination shall be filed not more than sixty days nor less than twenty days prior to the **general** election; whereas, as to those nominated for any offices, whether Federal, State, County etc. by petition of electors (so-called 'independents') the petition shall be filed and the candidate shall file his declaration of candidacy prior to the date of the primary election."

This opinion represents the studied judgment of this office and is adhered to. However, where the words "prior to the date of the primary election" are used in the last sentence thereof, there should appear instead the words "prior to the first Tuesday in May in the year in which a state-wide primary election is held." These words are hereby substituted for the above referred to words used in the opinion and the opinion is hereby corrected in this regard.

I shall now deal with the various inquiries in seriatim:

The first inquiry, in regard to the constitutionality of said Act, is laid in very general terms. This office, taking a cue from the Courts, undertakes to pass upon the constitutional validity of a statute only when the request

is clearly presented and then only as to the constitutional objections urged against it. Since you urge no particular objections against the constitutionality of this Act, its constitutionality will not be here considered, and I will assume that the Act is constitutional for the purpose of answering the other inquiries made. If you care to present particular objections as to the constitutionality of this Act, this office will be glad to consider the same.

In answer to the second inquiry, it is my opinion that the term "municipal office" as used in said Act applies to offices of cities and towns. The term "municipal" is repeatedly used in the laws of this state dealing with cities and towns, so often that when it appears in a statute it is presumed to refer to cities and towns unless the contrary clearly appears. Such is not the case here, and it is my opinion that the term was here used in the same sense that it is repeatedly used in the other laws of this State relating to cities and towns, and that it was the plain and clearly expressed intention of the Legislature that this Act should apply to offices of cities and towns just as it applies to Federal, State and County offices. It is very true that a county and the various subdivisions thereof are municipal corporations in the broadest sense. This fact has been kept in mind, but, nevertheless, it is my opinion, as stated above, that the term "municipal" is here used in the same sense in which it is repeatedly used in our laws dealing with cities and towns. I therefore hold that the term "municipal office" as used in said Act applies to offices of cities and towns.

The third inquiry must be answered in the affirmative. Act No. 516, General Acts 1935, page 1105, approved September 14, 1935, provides that all regular municipal elections in cities and towns should be held on the third Monday in September, 1936, and quadrennially thereafter. Thus it may be seen that all regular municipal elections under the general law are held at a different time from the state-wide general election for Federal, State, District and County offices, which is held on the first Tuesday after the first Monday in November of the even numbered years. If this Act only applied to municipal elections held at the time of the state-wide general election in November of the even numbered years it would not apply to any regular municipal elections held under the general laws. Such, in my opinion, was not the intention of the Legislature. Rather, it seems clear to me that the Act was intended to apply to all regular municipal elections held under the provisions of the general law, even though said elections are held at a different date from that on which the state-wide general election for Federal, State, District and County offices is held.

My answer to the fourth inquiry is in the negative. As pointed out in my answer to your third inquiry, all regular municipal elections for cities and towns under the general law are held on the third Monday in September, 1936, and quadrennially thereafter and consequently are held in years in which state-wide primary elections are held, such state-wide primary elections being held in all even numbered years. Municipal elections held in years in which there is no state-wide primary election are held under special or local laws and are to be governed by the provisions of the same and not by the provisions of the general laws on the subject such as this Act. It is obvious that the Act here under consideration was not intended to apply to municipal elections held in years in which no state-wide primary election is held since the provisions of the Act in regard to filing all petitions and declarations of candidacy by candidates nominated by petition relate to the first Tuesday in May in the years in which state-wide primary elections are

held, the first Tuesday in May being the time of the holding of the first statewide primary election in every even numbered year. This provision could not be effective in years in which no state-wide primary election is held.

As to the fifth inquiry, I wish first to call attention again to the opinion of this office to the Secretary of State, *supra*, which held that, as to those candidates nominated for municipal office by party machinery, certificates of nomination should be filed not more than sixty days nor less than twenty days prior to the general election; whereas, as to those nominated by petition of electors, the petition should be filed and the candidate should file his declaration of candidacy prior to the first Tuesday in May in the year in which a state-wide primary election is held. So, in strict compliance with the provisions of this Act, all candidates for municipal office who are nominated by petition of electors should file their petitions and declarations of candidacy by the time stated in the Act. But, it is my opinion that the failure of a candidate for municipal office nominated by petition to comply with these provisions of said Act would not keep the proper officer from causing his name to be printed on the ballot to be used in the municipal election in which he is a candidate. I call your attention to the fact that nowhere in this Act is there any inhibition against the proper officer causing the name of a candidate for a municipal office nominated by petition to be placed on the ballot, merely because of his failure to file his petition or declaration of candidacy within the time stated in the Act. The proviso which prohibits the Judge of Probate from causing the name of an independent candidate for state, county or federal office to be printed on the ballot unless he has filed his declaration to become such a candidate within the time stated in the Act does not include candidates for municipal office. At every other place in the Act "municipal" is used along with federal, state and county and the failure to so include it in this proviso shows a clear intention on the part of the Legislature that this provision should not apply to such candidates for municipal offices. The inclusion of some operates to the exclusion of all others. Therefore, it is my opinion, and I so hold, that the proper officer is not prohibited from causing the name of a candidate for municipal office nominated by petition of electors to be printed on the ballot, even though such candidate fails to file his petition and declaration of candidacy by the time set out in the Act. To me, the fact that the Legislature saw fit to place a penalty on all such candidates for Federal, State and County offices who did not comply with these provisions and did not place such a penalty on such candidates for municipal offices clearly shows that it did not intend for this penalty to attach to such candidates for municipal office. Therefore, I hold that the provisions in the Act in regard to candidates nominated by petition filing their petitions and declarations of candidacy by a certain date are *directory* only, insofar as they apply to such candidates for **municipal** office, and that, while in strict compliance with the law, all provisions should be followed by all such candidates for any office, yet the failure of such candidates for municipal office to so comply with them, does not prohibit the proper officer from causing their names to be printed on the ballot to be used in the election in which they are candidates.

In answer to the sixth inquiry it is my opinion that candidates for municipal offices should file with the Mayor or other like official of the city or town in which they are candidates and not with the Judge of Probate of the County in which such city or town is located. Section 485 of the Code of Alabama 1923 reads:

"485. MUNICIPAL ELECTIONS: HOW PROVIDED FOR.—In case of any municipal election held at a time different from a general state or federal election, the duties herein prescribed for the judge of probate in respect to receiving nominations, printing and distributing ballots and cards of instructions shall be discharged under the same sanctions by the mayor or other chief executive officer of the city or town."

Therefore, all candidates in municipal elections held at a time different from a general State or Federal election (and all regular municipal elections are held at a different time) should file with the Mayor or other like official of the city or town in which they are candidates and not with the Judge of Probate of the county in which the city or town is located.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 5, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

The Judge of the County Court is without authority to permit a criminal case based on a complaint to be withdrawn and filed, and when such illegal act is permitted the costs accruing up to the time of the attempted withdrawal and filing cannot become a claim against the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 25, 1936, in which you request my opinion as follows:

"Under date of March 2, 1936, you rendered an opinion to Hon. Chas. W. Lee, State Comptroller, saying 'The County Court is without authority under any circumstances to allow a prosecution to be withdrawn and filed.'

"1. What is the status of a County Court case in which the bench entry is 'Withdrawn and Filed?'

"2. In such a case are the officers fees a legal claim against the Fine and Forfeiture Fund of the County?"

Answering your first inquiry, I call your attention to an opinion of this office in Quarterly Report of Attorney General, Vol. 1, p. 245. In this opinion this office holds that there is no authority of law for withdrawing and

filing a complaint in a criminal case in the County Court; that section 4548, Code of Alabama, 1923, applies to indictments and to them only under certain conditions. So, such withdrawing and filing of such a complaint in the County Court, is without authority of law and void. Therefore, the costs accruing up to the time of such an attempt to withdraw and file cannot become a charge against the Fine and Forfeiture Fund of the County. In other words, you cannot make this a legal claim against such fund by the performance of an illegal act. Therefore, the only thing to do is to reinstate the case on the docket of the County Court, and then let the case proceed as though such illegal act was never attempted.

My answer to your second inquiry is in the negative for the reason set out in my answer to your first.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 5, 1936.

Hon. B. G. Robison,
Judge of Probate,
Pickens County,
Carrollton, Alabama.

Probate Judges are required by Act No. 179, S. 158, approved April 21, 1936, (General Acts 1936, Extra Session) to use the marriage license forms prepared and furnished by the Bureau of Vital Statistics of the State Board of Health. If the old books cannot be used to record the new licenses, then new books should be purchased.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of recent date in which you state:

"At your earliest opportunity, please answer the following question with reference to the construction of Senate Bill 158 approved April 21st, 1936, which is an amendment to Section 1153 of the Code of Alabama, 1923:

You request my opinion as follows:

"Am I, as Judge of Probate, required by this Act to adopt for future use the enclosed marriage license form prescribed by the Bureau of Vital Statistics of the State Board of Health, and to purchase new records on which to record the new form license and the other data embraced therein?"

In my opinion your question should be answered in the affirmative. Act No. 179, S. 158, approved April 21, 1936, (General Acts 1936, Extra Session) provides in part as follows:

"* * * All marriage license forms shall be prepared and furnished by the Bureau of Vital Statistics of the State Board of Health."

If you cannot use your old books in recording the new marriage licenses, then you should procure the necessary books to record the licenses, as you are required to do by statute.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 6, 1936.

Hon. Gaston Scott,
President, State Highway Commission,
Capitol.

Highway Department may advance money for securing right of way where county fails to furnish same.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of August 3, 1936, in which you request my opinion as follows:

"The Highway Department has been allotted the sum of \$87,000 by the Federal Government for the purpose of construction of a grade crossing elimination on the Old Shell Road in Mobile. This money is given for the purpose of eliminating dangerous grade crossings and such money is contributed solely and entirely by the Federal Government, and no appropriation nor matching of funds is required from the State Highway Department or the County. However, the Federal Government does not allow any of this money for allocation for grade crossings to be spent for the payment of rights of way necessary. Mobile County has refused to acquire this said right of way and the Attorney General's office has instituted condemnation proceedings upon the previous request of this Department and all that remains to be done is to pay the condemnation award in the Court in the amount of approximately \$12,500. If this amount is not paid in the Court in the near future, the Federal Government will withdraw this allocation and allow the money to be used in some other locality in which the right of way can be secured.

"The Highway Code, contained in the 1927 General Acts page 358, Section 31, provides as follows: 'Right of way for Roads: How acquired—

The right of way deemed necessary by the State Highway Department for a road or a bridge, constructed under the provisions of this article shall be acquired by the County, in which the road is to be located, without expense to the State.

"Should the County fail to or refuse to acquire the necessary right of way the State through the State Highway Department shall have authority at the expense of the County to acquire such right of way, either by purchase or the exercise of the right of eminent domain in the condemnation proceedings as provided for under the laws of this State."

"It is the opinion of the writer that the above section and in particular the last sentence which is underscored, gives the State Highway Department the right to acquire the right of way and pay for same with Highway Department funds, in the event that the County fails or refuses so to do. Inasmuch as Mobile County has refused to acquire the necessary right of way for the said underpass, this Department wishes to pay the condemnation award into the Court on the condemnation proceedings already had under the authority of the above quoted section.

"Please advise if the Highway Department does have the authority to pay this money for the condemnation award into the Court and also from what fund said money should be drawn as well as how the warrant should be made payable. The Attorney General is also requested to take whatever steps are necessary to secure repayment of this money from Mobile County. In order to insure prompt action in the payment of this money, it is suggested that the State Comptroller be officially advised as to the authority of the State Highway Department to pay the said condemnation award."

I am of the opinion that the Highway Department may properly pay into Court the amount assessed in the condemnation proceedings above mentioned.

The first part of Section 31 of the Highway Code (1927 General Acts, page 348 at page 358) above quoted by you, provides that the county shall furnish rights of way for State Highway projects. The second part of said section provides that if the county fails or refuses to acquire the necessary right of way, the State, through the Highway Department, may acquire same at the county's expense.

In order to acquire the required easement, funds are necessary, and these funds may properly be advanced by the Highway Department. If the Highway Department could not make such an advance, the quoted provisions of the law would be without practical application and a nullity. If for instance, the State should attempt to secure the right of way by contract to purchase, and then be compelled to wait until the county voluntarily furnished the funds or furnished them after litigation, the contract would ordinarily have expired. Under the present circumstances the right to pay the money into court will expire at the end of the statutory limit and the work done in effort to acquire right of way would be valueless.

In short, if the State cannot advance the necessary funds, we are in the situation of having a statute which gives the State the right to acquire

a right of way, without practical means of acquiring it. The Legislature did not intend such a situation.

The general rule as expressed in Corpus Juris is as follows:

"Statutory grant of a power of right carries with it, by implication, everything necessary to carry out the power or right to make it effectual and complete * * *." (Numerous authorities cited) 59 C. J. 973.

I am of the opinion, therefore, that the Highway Department may properly advance the funds required to be paid into Court under the award of the commissioners. As soon as this is done if you will so advise me I will take action looking to the repayment by the county of the amount advanced.

Payment may be made from funds appropriated by Act No. 373 of the 1935 Legislature (page 792, General Acts 1935 at page 798, Section XII (3). Warrant should be drawn to the Judge of the Probate Court of the County in which the project is located, in this case Mobile County.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 7, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Under the provisions of the Act commonly known as "County Budget Act," effective October 1, 1935, a County is authorized to refund and extend the payment of a temporary loan interest warrant over a period of twenty years, even though the warrant is not due and payable until February 1, 1936; after the refunding of this temporary loan a County is authorized to borrow 95% of the amount of such temporary loan for the succeeding year.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of August 3, 1936, as follows:

"Under the Provisions of the County Budget Law the Counties have authority to issue refunding interest bearing warrants payable over a period of 20 years.

"The examiners find that a county had a Temporary Loan of we will say \$10,000.00 due February 1, 1936. Has the County authority to issue refunding warrants for the \$10,000.00 Temporary Loan due February 1, 1936.

"The law also states that the counties can make a temporary loan against anticipated revenue not to exceed 95% of the Temporary Loan the preceding year.

"Can the counties issue refunding interest bearing warrants for the \$10,000.00 due February 1, 1936 and make a new Temporary Loan for \$9,500.00 against anticipated revenue."

Your inquiry involves an Act of the Legislature of Alabama approved September 9, 1935, commonly known as the "County Budget Act."

I shall confine myself to the questions propounded. Under Section 9 of the Act the counties have authority to issue refunding interest bearing warrants payable over a period of twenty years. The county you refer to in your inquiry has a temporary loan of \$10,000.00 due on February 1, 1936. I call your attention to the following part of Section 9:

"It shall be the duty of all Boards of Revenue, County Commissioners and other like governing bodies of the counties to refund all warrants, which are unpaid and past due at the time this Act goes into effect (the Act is effective on the first day of October, 1935), and for which there is no money available at that time."

I do not think the Legislature intended to say that a temporary loan that falls due on the day after the Act becomes effective cannot be refunded and extended as provided in Section 9. Such a construction would be unreasonable would, in part, defeat the purpose of the Act. I do not think the Legislature intended that the Act should apply solely to the refunding of warrants which are unpaid and past due on October 1, 1935, the effective date of the Act. Such a construction as this would, in a large measure, defeat the very purpose of this Act. Temporary loans made to counties are usually payable by the counties to the borrowing sources during the months of February, March and April. As a rule, all taxes are collected by March 1st of each year. If the Act is construed so that it includes only those warrants due and unpaid on the effective date of the Act, viz: October 1st, 1935, it would leave out a large number of temporary loans that fall due during the first three or four months of the year 1936. Undoubtedly, one purpose of the Act is to enable the counties to refund and extend over a period of years these troublesome temporary loans. It is my judgment that the county you have in mind has a right under the Act to refund the warrant representing the temporary loan, due February 1, 1936, even though the loan, strictly speaking, was not due and unpaid on the effective date of the Act, viz: October 1, 1935.

It is my judgment that a county may issue refunding interest bearing warrants for the \$10,000.00 mentioned in the third paragraph of your letter and make a new temporary loan for \$9,500.00 in anticipation of the collection of revenues. I beg to refer you to Section 11 of the Act dealing with temporary loans. Section 11 provides that nothing in the Act shall be construed to repeal the general laws of the State of Alabama authorizing counties to make temporary loans in anticipation of collection of taxes. But section 11 provides that hereafter no temporary loan in anticipation of the collection of taxes shall be made exceeding 95% of the amount of such temporary loans made during the preceding fiscal year, except for the purpose of meeting emergencies provided in Section 17 of the Act.

It is my judgment that under the provisions of this Act a county may refund a temporary interest bearing warrant although the warrant may not be due for several months after the effective date of the Act, and that in order to function the following year the county may borrow 95% of the loan of the preceding fiscal year. The plan set forth in the Act seems to be as follows: That as regards temporary loans, a county is authorized to refund such warrants and to extend the payment of the principal and interest over a period of twenty years. This would, of course, increase the indebtedness of the county by making it necessary for the county to provide in its budget each year thereafter for the payment of one-twentieth of the principal and interest. Presumably the county during the fiscal year following the year in which the temporary loan warrant is funded would need an additional temporary loan to run the county during the following fiscal year. In order that the county may run the Act says that the county may borrow 95% of the \$10,000.00, or \$9,500.00. In this way the Act provided for a 5% reduction in the amount of the temporary loans each year. In other words, after a lapse of ten years, under the provisions of the Act, the amount of the temporary loan would be only 50% of the amount first refunded. The purpose of the Act seems to be that by diminishing the amount of the temporary loan 5% each year, the temporary loan will finally be wiped out, provided the county is able in the preparation of its budget to make such reductions as will take care of the decreased revenue. The Act in practice works out as follows: The county is expected over a period of twenty years to completely wipe out this temporary loan; but no additional revenue is provided. This means that additional revenue is provided. This means that the county budget must be cut each year in order to take care of the 5% reduction provided for in the Act. The Act contemplates that the old temporary loan shall be wiped out at the rate of 5% per year over a period of twenty years, and that the new temporary loan shall be gradually diminished to **nothing**, at the rate of 5% per year. In other words, under the provisions of the Act the first \$10,000.00 refunded would be entirely wiped out over a period of twenty years, and, at the rate of 5% per year, the new temporary loan would be gradually wiped out.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 14, 1936.

Hon. Chas. W. Lee.
State Comptroller,
Capitol.

Section 17 of the County Financial Control Act, No. 379, General Acts 1935, page 803, approved September 9, 1935, gives the county governing body the authority to issue its interest bearing warrants to procure the necessary funds for which to pay the expense of the audits of the several offices of the county by the Comptroller's office when current funds are insufficient for such purpose and when in the judgment of the county governing body such expense constitutes an "emergency" obligation of the county.

Dear Sir:

I have your letter of July 18th, 1936, which follows:

"Is it legal for a county to borrow money under Section 17 of the County Budget Act, General Acts 1935, page 808, to pay for the expense of the audit by the Comptroller's Department of the several offices of the county when insufficient revenue has been set aside in their current budget for this purpose."

It is my opinion that Section 17 of the County Financial Control Act, Act No. 379, General Acts 1935, page 803, approved September 9, 1935, gives a county governing body authority to issue its interest bearing warrants to procure the necessary funds with which to pay the expense of audits of the several offices of the county by the Comptroller when current funds are insufficient for such purpose and when in the judgment of the county governing body such expense constitutes an "emergency" obligation of the county.

Section 17 of the County Financial Control Act, supra, reads as follows:

"Emergencies. In the event any situation over which the Board of Revenue, County Commissioners or other like governing body has no control results in an appreciable obligation against the county over and above what said Board has reason to anticipate, and for which no moneys from the current year's income are available to pay, such Board may issue its interest bearing warrants, as now authorized by law, in an amount sufficient to pay such emergency obligation. And the interest and maturities or principal of such loans shall constitute a part of the budget for the year in which they mature. But before such warrants shall be authorized or sold under this Section, such Board shall inquire into and find that such emergency obligation has accrued, and such finding spread upon the minutes of its proceedings."

Act No. 218, General Acts 1935, page 601, approved July 17, 1935, provides that the records of county officers in all counties in this State shall be examined at least once every two years.

Section 749 of the Code of Alabama, 1923, provides how the expense of these examinations shall be paid.

Under an opinion rendered to you by this office on July 9, 1936, it was held that the expense of audits of county officials is not such a claim against a county as to require presentation to the county governing body for approval.

Therefore, it is my opinion that the matter of examination of the records of the county officials of the various counties of this State and the payment of the expenses of the same by the respective counties is not a matter over which the county governing body has any supervision or control.

Since Section 17 of the Financial Control Act, supra, provides that the county governing body may issue its interest bearing warrants in an amount

sufficient to pay any emergency obligation, which arises from a situation over which the body has no control that results in an appreciable obligation against the county over and above what the governing body had reason to anticipate. It is, therefore, my opinion that a county governing body may issue its interest bearing warrants to procure the necessary funds with which to pay the expense of the audits of the several offices of the county by the Comptroller's Department when current funds are insufficient for such purpose and when in the judgment of the court such expense constitutes an "emergency" obligation of the county.

However, the county governing bodies of the various counties of this State should bear in mind when they make up their annual budgets that there will probably be such an expense against the county and should set aside an amount which they have reason to believe will be sufficient to pay such expense.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 14, 1936

Hon. H. E. Williams,
County Superintendent of Education,
Lauderdale County,
Florence, Alabama.

Officers—Member of County Board of Education vacates office upon removal of residence from county in which he was elected.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of August 8, 1936, in which you state as follows:

"For the past several years Mr. H. M. Mann has resided in Lauderdale County and has been a member of the county board of education. About 6 months ago he and his family moved to Madison County, Alabama, where he is manager of a store in Huntsville.

"He has not attended any meeting with the county board of education since he moved to Madison County about 6 months ago until last week when we had a meeting. When Mr. Mann moved out of Lauderdale County the remaining members of the board have held meeting without filling the vacancy caused by the removal of Mr. Mann from Lauderdale County."

You wish to know if Mr. Mann vacated his office as a member of the County Board of Education by moving from Lauderdale County to Madison County where he has established a residence and gone into business.

In my opinion, your question should be answered in the affirmative.

Section 2697 of the 1923 Code of Alabama, provides in part as follows:

"2697. How offices are vacated—Any office in this state is vacated—
* * *

(3) By (the incumbent) ceasing to be a resident of the state, or of the division, district, circuit, or county, for which he was elected or appointed."

The Supreme Court, in construing said section in the case of ^{BAKER}~~Barker~~ v. Conway, 214 Ala. 306, 108 So. 18, stated as follows:

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"Unquestionably, we think, our statute requires an actual residence by the holders of public office within the political division for which they are appointed or elected, and which it is their duty to serve * * * We do not mean to hold that any temporary absence by public officer would have that effect. Each case must be decided on its own facts, with a due regard for the elements of intention and actual absence."

From the above, it is my opinion that if a member of the County Board of Education actually changes his residence from the county in which he was elected, or appointed, and is not merely temporarily absent therefrom, he would vacate his office.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 15, 1936

Hon. Harry M. Touart,
Tax Assessor,
Mobile County,
Mobile, Alabama.

Taxation, assessment of property redeemed from tax sale—

1. Where property is redeemed from tax sale, the same should be listed and assessed for the current assessment year in which redeemed but without penalty.
2. If such property is not assessed before the end of the current assessment year, it should be assessed as an "escape".

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 1, 1936 addressed to Mr. Frontis H. Moore in which you ask my opinion on the following:

"The matter of penalizing property redeemed after the assessing period has closed, that is after the third Monday in January, has caused some confusion in this office, as for the last eighteen or twenty years, to my knowledge, by the order of the examiners of accounts, no penalty has been charged on assessments that were redeemed after the assessing period closed, which before the nineteen thirty-five law was passed, was the first Monday in February.

" * * * I am unable to find any law except the amendment to Section 291, which refers to installment payments, and this amendment was approved on March 26th, 1936.

"I have practically finished the tax books for the tax year of nineteen thirty-five and have not penalized assessments redeemed after the third Monday in January, for the reason that I always felt that the property was state property until same was redeemed, and the tax payer had no opportunity to assess the property during the assessing period, for the reason that same was sold for taxes, and that when same was redeemed after this period had closed, the tax assessor had no legal right to make a demand on the tax payer to file his assessment. And Mr. King, my predecessor, always felt that where no demand could be made, that no penalty could be charged.

"As you doubtless know, that the law requires that I furnish the state with an abstract not later than the second Monday in August, which is the tenth of August. It will require some length of time for me to go through the books and penalize those assessments that were redeemed after the assessing period."

Your inquiry calls for consideration of the following sections of the 1935 Revenue Act.

Section 29 provides that the return and listing of property for taxation by the Assessor must commence on the first day of October in every year and be completed by January 1st following, but that the Assessor may be allowed through the third Monday in January to make a supplemental assessment.

Section 31 requires every person to come in before the Tax Assessor and list his property after the first of October.

Section 41 requires the Assessor after the 31st of December to make a demand on each tax payer to return his property and it is the duty of the taxpayer to list his property before the third Monday in January.

Section 44 provides that upon the failure to secure from the tax payer his list of property on or before the third Monday in January the Assessor shall make an information assessment against him and add a penalty of 10%.

Section 45 provides that whenever the Assessor shall discover that any property has escaped taxation in any assessment within five years next preceding the current year he shall assess the same and add a 10% penalty.

There are other provisions providing for notice, appeal, etc., in Section 45.

Section 57 provides that the Tax Assessor shall complete his abstract and forward to the Comptroller not later than the second Monday in August, this being the section to which you refer.

Section 269 as amended by Acts 1935 page 1113, sub-division (b) relating to redemptions provides:

"Upon application to the Probate Judge to redeem land where the same has been sold to the State for taxes, which application shall be made on blank forms furnished by the State Land Commissioner, the Probate Judge shall submit such application to the Tax Assessor of the county in which the land sought to be redeemed is located and the Assessor shall, without delay, enter on such application an assessment value for each of the years for which **taxes are due** subsequent to the year for which such land was sold to the State."

Section 277 in full provides:

"That in five days from redemption of any real estate bid in by the State the **Judge of Probate shall notify the Tax Assessor** and Tax Collector of his county thereof and shall, on demand, pay to them the costs and fees to which they are respectively entitled; and **the assessor shall enter such real estate**, and the name of the person redeeming the same, on an appropriate list to be kept by him for assessment."

Section 291 as amended by Act No. 49 approved March 26, 1936, provides in full:

"Section 291. Whenever any real estate has prior to January 1st, 1935, been sold for taxes and bid in by the State at tax sale, the same may be redeemed in the same manner as heretofore provided for sales made after January 1st, 1935, except that the following additional provisions shall apply. All persons having the right to redeem, shall have four years from the date of sale to redeem and such redemption shall be made as in other cases, except that the party desiring to redeem may pay the amount of accrued taxes in four equal installments without interest or penalties. Any person having the right to redeem any property sold to the State for taxes, and who desires to redeem under the provisions hereof, shall, before January 1st, 1937, make application to the Probate Judge of the County where the real estate is situated, the same to be approved by the State Land Commissioner, and shall deposit with the Probate Judge a sum equal to not less than one-fourth of accrued taxes, without interest of penalties, and annually thereafter shall pay not less than one-fourth of said sum to the Probate Judge. The party redeeming said property shall, **within thirty days from the date of making said initial payment, assess said property for taxes for the then current tax year**, and the same shall be assessed for each year thereafter in the manner required by law, and the taxes for the subsequent tax years shall be paid in the manner required by law. Upon the payment of all back taxes, as provided for herein, and of all taxes for the subsequent tax years which have accrued, a certificate of redemption shall be is-

sued as in other cases. This act is to take effect upon its approval by the Governor."

The foregoing, I believe, are the pertinent statutes. I also call your attention to the following opinions in Quarterly Report of Attorney General, Volume 1, page 207, at page 215. In discussing Section 291 it was stated:

"It is therefore my conclusion that as to property sold to the State for taxes prior to January 1, 1935, if application is made within four years from the date of sale redemption is authorized by Section 291 without the payment of interest and this is true whether such redemption be for cash or on the partial payment plan. I think further that should a person paying the first installment desire to complete his payments in less time than allowed, he has that right though such payment must be in multiples of one-fourth of the total amount originally due."

It therefore appears that Section 291 did not provide a system of redemption essentially different from that provided by Section 269 except for the limited period set out redemptions might be made on an installment plan and, further, that such redemptions might be made without the payment of interest.

In further support of this it was stated in opinion in Quarterly Report of Attorney General, Volume 1, page 331, that if a person elects to pay cash (when redeeming under Section 291) without interest and penalties that the usual redemption certificate should be issued.

In Quarterly Report of Attorney General, Volume 2, page 205, after discussing Sections 291 and 292 the following conclusion was made:

"The conclusion that I reach from both the sections read together is that upon making the installment payment required the lands pass back to the redemptioner and hence it is his duty to annually assess and pay the taxes thereon for the years subsequent to such redemption."

In opinion in Quarterly Report of Attorney General, Volume 2, page 341, it was stated that where property is sold for taxes to an individual that thereafter it should be assessed to such individual and where the individual purchaser failed to assess the same within the current year it should be assessed to him as an escape.

Your attention is likewise called to Acts 1932, page 17, amending Section 3110 of the Code of 1923 (which appears as Section 269 of the 1935 Act) and opinion appearing in Biennial Report 1932-1934, page 279 construing said Act.

My attention has also been called to letter of Hon. John C. Curry, Chief Clerk of State Tax Commission, to Hon. W. M. Vaughan, Judge of Probate, Dallas County, under date of January 10, 1936, which, after reviewing various statutes concludes with this paragraph:

"There is no doubt that the taxes for the current assessing year must be assessed and collected and the manner of so doing should be de-

terminated by a reasonable construction of the law as it exists. In conclusion we say that it is our opinion that where the taxpayer could not return the property before the third Monday in January for the reason that it had not been redeemed from the State he could not be penalized for failure to make the return by that time. It is apparent, however, that if the taxpayer fails or refuses to make the return after he has redeemed the property, the assessor may assess the same as an escape and add the penalty required by law."

It is needless to observe the departmental rules and constructions of great weight in the construction of doubtful statutes especially when long adhered to and acquiesced in. *State v. Hobbie Grocery Co.* 225 Ala. 151.

I further call your attention to opinion in Quarterly Report of Attorney General, Volume 3, page 8, relating to assessments of stocks of goods in which it was held that stocks of goods brought in after October 1st are assessable in the manner provided by sub-section (d) of Section 10 are not subject to the penalty of 10% for the current year. It was stated therein as follows:

"It would appear that unless Section 25 is broad enough to provide for a demand in cases of this sort that the law has made no provision and certainly I do not find any provision providing a time in which such property should be listed after the party begins business."

"Under the rule of strict construction against the State I am of the opinion that the demand fee and the 10% penalty are not chargeable in cases of this sort.

"It is, however, none the less the duty of the Tax Assessor to list such property for assessment whenever he discovers any."

I have thus recapitulated the relating statutes, opinions and constructions in order that the state of the law may be before us at the time of your request.

It is my judgment that Sections 29 and 31 relate to the listing of property owned by tax payer on October 1st of each assessment year and that Sections 41 and 44 apply primarily to such cases. In other words, if a tax payer owns property on October 1st he should, before January 1st following, list said property for assessment, that upon tax payer's failure to do so by January 1st it becomes the duty of the Tax Assessor to make demand on the tax payer for such return; if the tax payer does not list such property by the third Monday in January the Assessor must make an information assessment and add a 10% penalty.

In an opinion in Quarterly Report of Attorney General, Volume 2, page 280, the making of this demand was held to be mandatory and under the new Act the demand fee was held collectible in all cases.

Section 45 provides for the making of escape assessment by the Tax Assessor. While the penalty is added it applies to property which "has escaped taxation in any assessment within five years next preceding the cur-

rent year". An escape assessment is, therefore, not to be confused with penalty assessment required by Section 44.

Coming to the particular question it appears that where property is redeemed subsequent to October 1st of any assessment year that its status is not exactly the same as that owned by tax payer on October 1st and if such property is redeemed subsequent to the third Monday in January it seems clear that there is no authority for making a demand and it is at least doubtful if there is no authority to make a demand whether the 10% penalty can be imposed.

Section 277 while slightly different from the Act of 1932 provides that the Probate Judge shall notify the Assessor within five days from redemption and the Assessor shall enter such real estate. I think it is reasonably certain that this contemplates that the Tax Assessor assess the property for the current assessment year. This is especially true in view of the fact that other sections authorize redemption upon payment of the annual amounts which would be due and does not provide for the payment of an additional year as the former statute did. Prior to the amendment of Section 291 I can see no difference in redemption under Sections 291 and 269, so far as assessment for the current and future years is concerned.

Under the holdings of this office above referred to when even the partial payment was made the title passed back to the tax payer and it was the duty of the Probate Judge to report to the Assessor and the duty of the Assessor to list for the current year. I, therefore, conclude that where redemptions were so made that it was the duty of the Assessor to assess the property for the current assessment year without the imposition of 10% penalty. The foregoing however, is not intended as authority to relieve the tax payer of his duty to see that his property is listed for all years.

I am in accord with the quoted part of Mr. Curry's letter but I think that it should be limited to "escapes". In other words, if property is redeemed during the assessment year, October 1, 1935 to September 30, 1936 and if by inadvertence or otherwise the Probate Judge does not report, the tax payer does not list and the Tax Assessor does not assess such property prior to October 1, 1936 when taxes should become due then the property is an "escape" and it is the duty of the Assessor to assess it as an "escape" and assess the penalty. I believe that this answers all the questions except the effect of the amendment to Section 291 of March 26. This amendment was written primarily for the purpose of definitely clearing up any doubt as to whether the Probate Judge or the Tax Collector should collect the annual taxes in cases where redemption was made on the installment plan. It merely confirms the previous opinion of this office above referred to. It is my judgment that this is a particular requirement to the tax payer and to return his property within thirty days after redemption but I do not find any specific authority for making a penalty assessment for his failure to so do. Presumably the Probate Judge has already reported and the Assessor has already entered the assessment as authorized by Section 277. I, therefore, conclude that where redemptions are made during the assessment year that the property should be assessed for such current year but that a penalty is not imposable until the end of such assessment year when the property becomes an escape.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 15, 1936

Hon. John I. Smith,
Tax Collector,
Etowah County,
Gadsden, Alabama.

Taxation—Tax Collectors, Redemption—

1. Where real estate is sold to the State for taxes, and not redeemed, Tax Collector should be allowed credit under Section 178 of 1935 Revenue Act for taxes assessed but which become due subsequent to such sale.

2. Where real estate is redeemed from tax sale to State, taxes becoming due subsequent to such redemption are collectible by Tax Collector.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 31, 1936, stating:

“Kindly advise if I should collect 1936 taxes on property sold to the State in June of this year for 1935 tax. The Tax Assessor had assessed this property prior to my tax sale.

“Also do I collect the 1936 taxes on property which has been partially redeemed in the Probate Office and abstracted to me by the Tax Assessor?”

In reply to your first question I am assuming the following facts:

1. That certain real estate was assessed as of October 1, 1934.
2. That taxes thereon became due October 1, 1935.
3. That same being unpaid the real estate was sold to the State for such taxes.
4. That as of October 1, 1935, such real estate was assessed and but for the sale to the State, taxes would be due thereon on October 1, 1936.

If these premises be correct, I advise:

The real estate being sold to the State prior to October 1, 1936, the Tax Collector should be given allowance therefor as an item sold to the State under the provisions of Section 178 of the 1935 Revenue Act.

In answer to your second question I assume the following:

That certain property was redeemed from tax sale during the tax year October 1, 1935 through September 30, 1936 and subsequent to such redemption the Tax Assessor listed and assessed such property. You wish to know if you should collect taxes on such property that will become due October 1, 1936.

My answer to this is, of course, in the affirmative. It is the duty of the Tax Collector to collect all taxes due and when property is redeemed it immediately becomes liable for assessment and taxes thereon are payable when due.

See 277 Revenue Act 1935.

See 291 Revenue Act 1935, as amended by Act No. 49, approved March 26, 1936,

Opinion to Homer F. Mitchell, Probate Judge, Cullman County, dated June 15, 1936, copy of which is enclosed.

Opinion to Roy Johnson, Tax Assessor, Jefferson County, Quarterly Report, Vol. 2, page 205.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 15, 1936

Hon. C. B. Gullatt, Jr.,
Judge of Probate,
Russell County,
Seale, Alabama.

1. Taxation; redemption—Where real estate is sold for taxes to a person other than the State a mortgagee whose mortgage was duly recorded at the time of the sale has a right to redeem such land at any time within three years even though such purchaser has served written notice upon him more than one year preceding the expiration of such three year period.

2. Mortgagee of record at the time of sale can redeem at any time within one year from the date of the written notice from the purchaser at the tax sale served upon him, even though three year period from time of sale had previously expired.

Opinion of Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 28th, 1936, in which you state:

"Please explain to me FULLY the meaning of the last sentence of Section 198 of the 1929 Revenue Code. 'Persons entitled to, and time allowed for redemption'. This sentence begins with the words 'If the mortgage or other instrument, etc.,' and ends with the words 'shall be sufficient notice.' "

I do not fully understand what you desire but am presuming that you wish to know the time a mortgagee has to redeem from the tax sale where the lands are sold to an individual.

I call your attention to an opinion in Biennial Report of Attorney General, 1932-1934 at page 43 which I think answers your question. This opinion holds (1) that where land is sold for the payment of taxes upon which there was at the date of sale a mortgage duly recorded in the office of the Probate Judge such mortgage has right to redeem such land from such sale at any time within a year from the date of written notice from the purchaser of his purchase of said land at tax sale and (2) a tax deed executed to the purchaser at such tax sale before the elapse of twelve months after such notice served upon such mortgagee in no way effects the right of such mortgagee to redeem within the one year period after notice. The statute (and I might state that Section 298 of the Revenue Compilation of 1929 appears as Section 268 of the Revenue Act of 1935) provides that real estate sold for taxes and purchased by any other person that the State may be redeemed at any time within three years from the date of sale by the owner, mortgagee, etc., and concludes with the following:

"If the mortgage or other instrument creating a lien upon which a party seeks to redeem is duly recorded at the time of said tax sale the said party shall, in addition to the time herein specified, have the right to redeem said real estate sold or any portion thereof covered by his mortgage or lien at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale served upon such party and notice served upon either the original mortgagee or lien holder or their transferee of record or their heirs, personal representatives or assigns shall be sufficient notice."

Reading the entire statute together with the construction given in the opinion above cited it is my judgment that where lands are sold at a tax sale to a person other than the State the mortgagee has in any event three years in which to redeem under the present statute, even though the one year period from the time of notice had previously expired; that in no event can he lose his right to redeem until the expiration of one year from the service of written notice upon him by the purchaser at the tax sale, even though the three year period from time of sale had already expired. To illustrate, if the purchaser immediately after the purchase gives such mortgagee notice, such mortgagee has three years in which to redeem; if the purchaser waits until the expiration of one year from the date of sale to give the mortgagee the notice required, such mortgagee would have after the time of notice two years before the expiration of the maximum period of three years to redeem. If the purchaser waited two years from the date of sale to give the mortgagee notice as required such mortgagee would have one year to redeem which would equal the three year period allowed the owner. However, if the purchaser at the sale waited until near the expiration of the three year period or a longer period before giving the mortgagee notice the mortgagee would still have the right to redeem within one year from the date of the service of such notice. I trust that this is explicit enough to clear up your difficulty.

The foregoing opinion is predicated upon the presumption that the tax sale was made since the extension of the redemption period from two to three years. If the sale was made under Section 3109 of the Code of 1923 being Section 298 of the Revenue Compilation to which you refer, what I have said in the foregoing with reference to the three year period of redemption would apply equally as to the two year period.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 17, 1936

Hon. Roy Johnson,
Tax Assessor, Jefferson County,
Court House,
Birmingham, Alabama.

The Tax Collector, under the authority of Section 178, may report and have allowed clerical errors, but may not merely report for allowance over-valuation. If the facts are such as, in the opinion of the Tax Collector, constitute a clerical error, he may so report, and if in the opinion of the County Commission they constitute such an error, they may allow the Tax Collector a credit therefor.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Under date of April 11, 1936, you wrote me as follows:

"The Grasselli Chemical Company made their assessment for 1935 and, as you will note from the assessment, wrote thereon that certain buildings had been removed. However, they did not protest and nothing was done about it until the taxes became due.

"I am thoroughly convinced that I do not have authority to make any change in this assessment but as a matter of courtesy to the law firm of Bradley, Baldwin, All & White, who are attorneys for the Grasselli Chemical Company, and at their request, I am writing you for an opinion in this matter."

You attach to your letter a copy of the assessment of the Grasselli Chemical Company for the tax year beginning October 1, 1934 and ending September 30, 1935; (b) copy of the affidavit of which you say the facts stated in the affidavit are correct. You add the following:

"A reduction in this assessment was heretofore allowed to this taxpayer for and on account of certain personal property dismantled and

removed from the lands described in this assessment before October 1, 1934. The balance due upon such assessment, including the amount due for and on account of the assessed values of the buildings removed from such lands is the sum of \$1958.48 with interest from January 1, 1936.

"No reduction has been allowed for and on account of the assessed values of the buildings. It appeared to the Board of Revenue of this County upon the facts submitted to it by this taxpayer that substantially all of the buildings on this land had been dismantled and removed before October 1, 1934 and the Board of Revenue authorized me to correct this assessment so as to exclude therefrom the value of the assessment of the buildings theretofore dismantled and removed. I am submitting this matter to you and would be obliged if you would advise me as to my authority and duty in the premises."

The facts stated in the affidavit show that prior to October 1, 1934, a large portion of the buildings on the property of the Grasselli Chemical Company were removed, and that on the return made by the taxpayer a valuation of some \$9,900.00 was placed as the taxpayer's estimate accompanied by the statement to the effect that a large portion of the buildings situated thereon during the previous year had been removed. The previous year's valuation on the buildings had been \$38,500.00, and this valuation was put in by the tax assessor, apparently overlooking the statement on the return that the buildings, or portion of them, had been removed prior to the assessment date.

You also attach letter from the State Tax Commission, in which it was stated: "It appears, therefore, that the only way in which this matter can be handled with a view of eliminating any part of the tax is through an allowance as an error." Mr. Curry who wrote the letter does not make the positive statement that the matter is so allowable.

It appears from the entire file that either property was assessed which did not belong to the taxpayer on October 1, or that there was an actual over-valuation of property which did belong to the taxpayer on that date.

Section 178 of the 1934 Revenue Act provides:

"Section 178. The tax collector shall in each year report on oath to the State Tax Commission at Montgomery, and to the court of county commissioners, or other court of like jurisdiction, at the June term thereof, a list on a form prescribed by the State Tax Commission, of the persons from whom the taxes assessed against them cannot be collected, with the amount of taxes, State and County assessed against each, which shall be termed 'list of insolvents,' and a list of such persons as have been overassessed or wrongfully assessed, with the taxes State and County assessed against each, which shall be termed 'list of errors in assessments', and any taxes which may be in litigation, in order that the same may be passed upon and determined by the court. The Tax Collector shall cause the said 'list of insolvents' to be published twice during the month of July following the submission thereof to the June term of the Court of County Commissioners or other Court of like jurisdiction. Said publication shall be made in a daily newspaper printed

and published in said County; if no such paper is published therein, then in a weekly newspaper published in said County; if there be neither a daily or weekly newspaper of any sort published in said County, then he shall post said 'list of insolvents' in the Court House and in three other conspicuous places in said County and keep said posting available for the public during the entire month of July. A failure to publish said list as here required shall constitute a misdemeanor."

In a lengthy opinion to Hon. R. E. King, Tax Collector of Mobile County, under date of July 28, 1936, the meaning of this section was discussed, and particularly the word "over-assessed." I am enclosing copy of this opinion.

The opinion contains the following conclusion:

"Reading this provision along with the other body of the law and the holding of the Court that an assessment once made final is binding both on the State and the taxpayer, I am of the opinion that the word 'over-assessed' cannot be construed so as to authorize the Tax Collector to revalue property which has been valued and assessed by the proper authorities and the tax year has closed. In fact, except in the matter of escapes, as pointed out, I find no authority for the Tax Collector to assess and value property whatever. To give such a meaning to the word 'over-assessed' would render practically nugatory other provisions of the law for the final assessment and valuation of property which are set out in detail and in extenso and construing which our Supreme Court has said makes a final and binding assessment both on the State and on the taxpayer.

"The problem thus confronts us as to giving a proper and reasonable meaning to the word 'over-assessed' as used in Section 178. It is to be noted that this word is included in the Section providing for the report by the Tax Collector to the State Tax Commission and to the Court of County Commissioners the following items:

"1. The 'list of insolvents'.

"2. A 'list of such persons as have been over-assessed or wrongfully assessed, which is termed 'list of errors and assessments' and

"3. 'Taxes in litigation'.

"Following Section 178 is Section 179 authorizing the Court of County Commissioners 'to examine such list and ascertain * * * what taxes contained in the list of errors and assessments should not have been collected by him by reason of such errors.'

"From reading the whole of these two Sections, it is clear I think that the words 'over-assessed' or 'wrongfully assessed' are used in practically the same sense and that the only error or errors which the Tax Collector would be authorized to correct are those of a clerical nature. If the rate of taxation was \$2.00 per \$100.00 and the Assessor had er-

roneously calculated it at \$2.25 per \$100.00 such an error would be clerical and the Tax Collector would be authorized to secure allowance for the excess. Likewise if multiplying the valuation by the correct rate the result was an amount in excess of that properly due, the Tax Collector would be authorized to have an allowance for the excess over the correct amount. There might be a possible case where the Assessor included property not in existence and which fact affirmatively was shown on his records, thus making a greater amount of taxes due than were legally payable. In such cases however, the error must be clerical and not judicial in order for the Tax Collector to secure any allowance therefor."

"I conclude, therefore, that the word 'over-assessed' as used in Section 178 does not authorize the Tax Collector to revalue property but merely authorizes the correction and allowance for clerical errors by which the amount of taxes shown to be due is greater than are legally payable."

The question which, therefore, confronts the Tax Collector is determining whether there was a clerical error on the part of the assessor or an over-assessment in the sense of an overvaluation. If he should conclude that it is a clerical error and report the same to the County Commissioner for allowance as such and the Commission, upon examination of all the facts, should conclude that it is such a clerical error as is contemplated by Section 178, as so construed, the amount due should be so corrected. If on the other hand, it should be found that there was a mere over-valuation, the amount due should not be changed.

It seems in the last analysis to be a matter for the Tax Collector and the Court of County Commissioners to determine, the construction of Section 178, having been fully discussed in the opinion enclosed.

It does not appear that the Tax Collector has taken any action on this matter, but as you presented the question in so much detail, I have written fully on the subject, and am sending a copy to the Hon. J. W. Hamilton, Tax Collector of Jefferson County.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. J. C. Pattillo,
Clerk of the Circuit Court,
Clanton, Alabama.

August 20, 1936

1. Where a convict is sentenced to hard labor for the fine and cost and the cost is paid to the officers and witnesses under Section 3667, Code of Alabama of 1923, and the defendant later pays the cost, the same must remain in the State Treasury to the credit of the Convict Department.

2. The Clerk is entitled to commissions on all moneys transmitted to the State.

3. Where money is paid to the County Treasury it should go to the State, said payment being made by mistake or through a misinterpretation of the law, this money should be returned to the Clerk and same transmitted to the proper custodian.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 20, 1936, in which you request my opinion as follows:

"Please render me your official opinion on the following statement of facts:

"Will Kennedy was convicted in the Circuit Court of Chilton County, Alabama, for the offense of Violating the Prohibition Law and was fined \$50.00 and costs of court, besides additional hard labor of six months imposed by the Court. No part of the fine and costs was paid and the defendant was duly sentenced to twenty days for the fine, sixty-seven days for the costs and the six months additional hard labor, a total of six months and 87 days. On December 12, 1935, said defendant began serving and served until January 9, 1936. On January 9, 1936, a friend of the defendant paid to me, as Clerk of the Circuit Court, the full amount of the costs in this case, the same being \$49.85, and I am informed that this information was conveyed to the Governor and this defendant was paroled.

"Under Section No. 5518 of the Code of 1923, I disbursed to the State Treasurer, the solicitor's fee of \$30.00, less my 5% commissions, and also under the law, I disbursed to the State Treasurer and the County Treasurer, each, one-half respectively of the trial tax, less my 5% commissions, and also disbursed to myself and to the sheriff the respective clerk and sheriff fees and to the witnesses the witness fees due. After disbursing the costs in this manner the State mailed me a check for \$11.55, in payment of or refunding court costs under Section No. 3667 of the Code and I mailed to the State Board of Administration my check for this amount. It is the contention of the State Board of Administration that they are entitled to all of the court costs in this case and it is my contention under the law, that it is my duty to disburse this in the way the law says I must, as I have referred to above. The State Board of Administration refers me to 1928-1930 Opinions of the Attorney General, page 537, as authority to pay them all the costs in this case.

"It will be observed from the above state of facts that the defendant served something less than one month at hard labor, and as to whether this time he served will be given credit toward the costs or fine, I am not informed, but in any event he has not served sufficient time to pay the costs which was sixty-seven days.

"The first question I would like for you to advise me, is whether or not under the law and under the above facts, it is my duty to pay the solicitor's fee to the State Treasury, as provided by Section No. 5518 and one-half of the trial tax each to the State and County Treasurers, as the statute provides and the Clerk's, Sheriff's and witnesses' fees to the respective parties, or to pay all of this cost to the State Board of Administration.

"If you hold that it is my duty to pay this cost to the State Board of Administration, then will you please advise me whether or not I am entitled to deduct 5% commission from the solicitor's fee and trial tax as the law provides when the same is paid to the State and County Treasurers.

"If you hold that this money should have been remitted to the State Board of Administration, then will you please advise me if the State and County Treasurers will be authorized under the law to pay back to me this money so paid to them?

"As to my authority in receiving the money, I refer you to the case of State v. Jordan, 23, Ala. App. 127, 122, So. 185."

Answering your first request it is my opinion and this office has so held that if the defendant is sentenced to hard labor to pay fine and cost and the State has paid the cost under Section 3667, Code of Alabama, 1923, and the defendant has been delivered to the State and has begun his service then if the defendant comes in and pays the cost, this cost goes to the State Treasury and is placed to the credit of the Convict Department, Quarterly Report of Attorney General, Volume 3, page 188. I am enclosing you a copy of this opinion.

Answering your second inquiry as to your commissions when transmitting money to the State I call your attention to the General Acts of 1931, page 669 (Code Supplement 1936, Michie, Sec. 7278 (1) which is as follows:

"Section 7278 (1) FEES OF CLERK AND REGISTER FOR COLLECTION OF MONEY.—The Clerks and registers of the several circuit courts of the State of Alabama shall receive five per cent of any sum or sums collected by such clerk or register for the State of Alabama, as compensation for the collection and remittance of the same, the said percentage to be deducted by such clerk or register making the collection from such sum or sums collected."

I think under the above section you are entitled to your commissions on all moneys transmitted by you to the State or any department of the State.

Answering your third request it is my opinion if you have paid this money to the County Treasury through mistake or misinterpretation of law that the County Treasurer is authorized to reimburse you so that the money may be sent to the proper custodian.

The court of county commissioners or other governing body of the county should order the treasurer to pay this sum in accordance with the foregoing opinion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 21, 1936.

Hon. Hodges Crow,
Tax Collector,
Morgan County,
Decatur, Alabama.

Tax Collector—Notice of sale of property for taxes must be published in accordance with the provisions of Section 224 of the 1935 Revenue Act, which provides that description of property to be sold must be given.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of recent date, which follows:

"Will Tax Collectors be permitted to advertise 1935 Real Estate for sale by printing the name of the owner, the tax and cost and the printer's fee, omitting a complete description of the land? For example—Joe Doe—Tax & Cost \$50.49 Printer's Fee \$1.40?"

I assume that you refer to the notice which you are required to give after the Judge of Probate has entered a decree of sale of property for taxes.

The notice which you are required to give in this case must be in accordance with the provisions of Section 224 of the 1935 Revenue Act, Section 224 reads as follows:

"Section 224. Immediately at the end of any term of court at which any decree for sales of real estate for the payment of taxes are rendered, or as soon thereafter as practicable, the tax collector shall proceed to enforce such decree by sales of real estate ordered to be sold, and to this end shall give notice for thirty days before the day of sale, by publication for three successive weeks in some newspaper published in the county, or at least three (3) weeks before the day of sale shall post a notice at the courthouse of his county, and at some public place in the precinct in which the real estate is situated, that at the time specified therein, he will proceed to sell such real estate separately, **describing such portions as are embraced in each decree** and stating the amount for which each decree was rendered (without stating the items of which each decree is composed) and the person against whom the taxes embraced in such decree were assessed, or if assessed to 'Owner Unknown', stating that fact. The rate to be charged for publishing such notice in a newspaper shall not exceed one and one-half cents per word for the first insertion, and one cent per word for each subsequent insertion; but no allowance shall be made for the publication of any matter other than is required by law; and if no newspaper is published in the county, or if the publication of the notice cannot be had in the county at the above rate, the posting of such notice at the courthouse and at a public place in the precinct in which the real estate is situated, as required by this section, shall be sufficient notice of such sale." (Emphasis supplied).

You will note that this Section provides among other things that all such portions as are embraced in each decree of sale shall be described in the notice. Therefore, it is my opinion that you must describe each portion of property which is to be sold for taxes in your notice and that you could not give notice merely by giving the name of the party and the amount of the taxes. This notice should be given in strict conformity with the provisions of Section 224, supra, which, as pointed out above, requires that a description of the property to be sold must be given.

As to the kind and nature of the description required to be given in your notice of sale, as provided by Section 224, supra, I refer you to the provisions of Sections 215 and 226 of the 1935 Revenue Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 25, 1936.

Mrs. Frank C. Turner,
Judge of Probate,
Washington County,
Chatom, Alabama.

Licenses—Under facts stated Probate Judge not authorized to issue the required license upon the payment of the difference between the cost of the license taken out and the license required.

Opinion by Assistant Attorney General Kohn.

Dear Madam:

I wish to acknowledge receipt of your letter of August 11, 1936, in which you request my opinion as follows:

"If a person who buys a saw-mill license under schedule 123, License Code, for a saw-mill, and gives the capacity of the mill less than he really operates under, say he buys a license for a mill cutting less than 5 M ft. a day and the license inspector later finds out that he is operating a 10 M. cap. mill and cites him for the 10 M. cap. mill, do you think it legal or right for the Probate Judge to issue to him a license for the difference between the prices of the two licenses, for instance a 5 M cap. mill carries a \$15.00 license and a 10 M. cap. mill carries a \$37.50 license, could we issue him a license for \$22.50 which is the difference between the price of the two licenses, I can not find anything in the Rev. Code giving me this authority. It occurs to me that he would have to be cited for either one or the other capacity mills, and not for an additional sum, in other words could I accept the \$22.50 plus the 15% penalty and \$1.50 license inspector citation and issue him a 10 M. ft. capacity mill license? I would appreciate very much this opinion at an early date as I have a few cases like this on file in my office right now."

In my opinion you do not have authority to issue the license for the mill operating at a capacity of more than five thousand and not exceeding ten thousand feet per day upon the payment of the difference between the cost of the license for a mill operating at a capacity of five thousand feet per day and the cost of the license for a mill operating at a capacity of more than five thousand and not exceeding ten thousand feet per day, as each license is separate and distinct and the amount paid on the lower license cannot be used as a credit on the amount required to be paid for the higher license.

The license inspector should cite the mill owner for the current license, irrespective of the license already procured.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 25, 1936.

Hon. R. H. Williams,
Judge of Probate,
Marshall County,
Guntersville, Ala.

Taxation—Redemption—

1. Party holding mortgage on property sold to the State for taxes more than four years prior to the application to redeem, cannot redeem under Section 291 without payment of interest and penalties even though notice of sale was not actually served on such mortgagee.
2. Such person can redeem under Sections 268 and 269 at any time before the title passes to the State.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 7 in which you state that a party in your county held a mortgage on real estate which was sold to the State for taxes on June 20, 1932; that the mortgagee was not advised of such sale and now desires to redeem, claiming that because notice of the sale was not served, she is entitled to redeem under Section 291 of the Revenue Act of 1935 without payment of interest and penalties even though the four year period allowed for such redemption by such section has expired.

It is my judgment that the limitation of four years placed in 291 is absolute and unconditional and that there is no authority to extend such period.

I call your attention to opinions in Quarterly Report Vol. I, pages 207 and 331; Quarterly Report, Vol. II, pages 205 and 249.

Of course, the mortgagee or any other person entitled to redeem has, under Sections 268 and 269, the right to redeem at any time before the title passes out of the State.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 25, 1936.

Hon. F. M. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama.

Deputy Sheriff who is not on a salary would be entitled to what is known as informer's fee where conviction is had in cases involving distilling and possession of stills.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 8, 1936, in which you request my opinion as follows:

"During the last session of the legislature a bill was passed placing me on salary No. 93 S-127, Tucker.

"The question has come up now as to who is entitled to the seizure fee in Distilling and Liquor cases. If I have a deputy Sheriff who is not on salary and he furnishes the information leading to the capture of a still and Distillers could he be paid the informers fee of \$50.00 or \$25.00 as the case might be?

"However under section 6 of the above bill it states that the Deputy Sheriff of this type cannot be paid by the County. Can he be paid this seizure fee by the State?

"Under the bill placing the Sheriff of Jefferson County on salary which is practically like this one any Deputy Sheriff gets a still and the Distiller is convicted he is paid this seizure fee whether he is on salary or not."

It is my opinion that such deputy sheriff as you described above would be entitled to the informer's fee, on conviction, under Sections 4656 and 4657, Code of Alabama, 1923. I call your attention to an Act of the Legislature, approved April 20, 1933 (General Acts, 1933, page 200). This Act changes the amount paid for this service and in this connection I also call your attention to an opinion of this office, construing this Act, written March 19, 1934, to Hon. R. B. Ford, Sheriff of Randolph County, Biennial Report of the Attorney General, 1932-34, page 533.

This office has held that when the Sheriff or deputy is on a salary, such officer would not be entitled to this fee. In this connection, I call your attention to an opinion of this office, written to Hon. John D. McNeel, State Comptroller, under date of March 25, 1935. (Office Edition, Bk. 3-A, page 62).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 25, 1936.

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama.

Licenses—War Veteran entitled to exemption of \$25.00 on privilege license for only one business or occupation.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of August 19, 1936, in which you state:

"A party who says he is eligible for the exemption allowed War Veterans, has applied for a privilege license in this County. He states that he was granted a War Veterans License under a different Schedule in Montgomery County but has moved here now.

"Will you give me an opinion as soon as possible as to the following:

"May a War Veteran who has been granted an exemption in one County on a Privilege License, move to another County in the same tax year and secure the Exemption on a different line of business in the new County."

In my opinion, your question should be answered in the negative. The statute specifically confines the exemption granted to one business or occupation.

I refer you to Section 3 of Act No. 494, S. 348, approved September 13, 1935 (General Acts 1935, page 1058) which is as follows:

"Section 3. That each such person who shall engage in, or carry on, any business or occupation as a means of livelihood through the personal efforts of such person or through the personal efforts of such person and not more than one employee, helper, or apprentice, for which business or occupation a license tax is prescribed by or for any County of Alabama, shall be entitled to a license from such county to so engage in, or carry on, such business or occupation, upon payment of the license tax so prescribed, less all, or such portion of, such license tax as shall not exceed Twenty five Dollars (\$25.00); provided, however, that no such person shall be entitled to the prescribed deduction or commutation in respect of more than one business or occupation for which a license tax is prescribed by law."

I refer you to Biennial Report of the Attorney General 1932-34, page 79, in which the Veterans Act approved July 2, 1931, is construed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 28, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Costs—The item of cost which appears in Section 3667, Code of Alabama, 1923, where it says, cost of committing magistrate and constable or preliminary trial, both together not to exceed \$5.00, includes all of the cost of preliminary hearing and not merely the cost of the committing magistrate and constable.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 17, 1936, in which you request my opinion as follows:

“You are respectfully requested to compare the following Code sections and render an opinion regarding, viz:

“Code of Alabama 1896, Section 4511, page 213—

“‘and costs of committing magistrate and constable on preliminary trial, both together not to exceed \$5.00.’

“Code of Alabama 1907, Section 6572, page 413—

“‘costs of committing magistrate and constables or preliminary trial, both together not to exceed \$5.00.’

“Code of Alabama 1923, Section 3667, page 176—

“‘costs of committing magistrate and constables or preliminary trial, both together not to exceed \$5.00.’

“In both the Code of 1907 and 1923 the wording is changed from ‘on preliminary’ to ‘or preliminary’ which very materially changes the meaning of this portion of this section. Kindly advise me what, in your opinion, is the correct interpretation of this part of Section 3667 of the Code of 1923.”

Answering your first inquiry, the Code of 1896, Section 4511, reads as follows:

“and costs of committing magistrate and constable on preliminary trial, both together not to exceed \$5.00.”

This clearly means that the cost of the committing magistrate and constable on preliminary trial separate and apart from all other costs can be paid up to and including \$5.00.

Code of 1907, Section 6572, seems to have changed the wording and instead of saying

“and costs of committing magistrate and constable on preliminary trial, both together not to exceed \$5.00.”

says,

“costs of committing magistrate and constable or preliminary trial, both together not to exceed \$5.00.”

You can see it changed the word “on” where it appears in Section 4511, Code of 1907, to the word “or” and we find this is carried forward in the Code of 1923, in Section 3667.

It is my opinion this Section as it now appears not only includes the cost of the magistrate and constable but must include all of the cost of the preliminary examination. I do not think as suggested by some that this change is a misprint as it appeared in the Code of 1907 and then again in the Code of 1923.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 28, 1936.

Hon. Roy Johnson,
Tax Assessor,
Jefferson County,
Birmingham, Alabama.

Redemptions—Valuation by Tax Assessors—

1. It is the duty of the tax assessor on redemption to fix the valuation for each of the years subsequent to the year for which the land was sold to the State for taxes.

2. Upon appeal, it is the duty of the Court of County Commissioners to fix such values for each of the years subsequent to the year for which the land was sold to the State for taxes.

3. The statutes do not provide an appeal from the action of the Court of County Commissioners.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 18, 1936 in which you make the following inquiries:

"1. Whether I have the authority to change the 1935 assessment on property sold to the State for 1934 taxes, upon application to redeem same. For example: If the owner of property sold to the State for 1934 taxes makes application to redeem same and the 1935 assessment on such property is not, in my opinion, sixty percent of the fair and reasonable marketable value of such lands, have I the authority to change the 1935 assessment on such property and certify such change to the Probate Judge of said County?

"2. If the party making application to redeem is not satisfied with the 1935 assessment so placed upon such property by the said Tax Assessor, can he appeal same to the Board of County Commissioners, or like governing body? Does the Board of County Commissioners, or like governing body have the authority to certify to the said Judge of Probate what they deem sixty percent of the fair and reasonable marketable value on such property?

"3. Is the assessment so placed upon such property by the said Board of County Commissioners, or like governing body, final, or does the taxpayer have the right to appeal such assessment, fixed by the Board of County Commissioners to the Circuit Court of said County, should he be dissatisfied with the assessment thereon placed by such Board of County Commissioners, or like governing body?"

The reply to questions one and two is to be found in subsection (b) of Act No. 55, approved March 26, 1936 (General Acts 1936, page 30):

"(b) Upon application to the Probate Judge to redeem land, where the same has been sold to the State for taxes, which application shall be made on blank forms furnished by the State Land Commissioner, the probate judge shall submit such application to the Tax Assessor of the County in which the land sought to be redeemed is located, and the assessor shall, without delay, enter on such application as assessment value for each of the years for which taxes are due, **subsequent to the year for which such land was sold to the state for taxes**, and such assessment value shall be sixty percent of the fair and reasonable market value of such lands as of October 1st of the year or years subsequent to the year for which the land was sold for taxes. (c) Any party having a right to redeem said property, his agents or attorney, shall have the right to file a written protest with the Court of County Commissioners or like governing body of the County, and to the State Tax Agent objecting to the valuation of said land as placed on said property by the Tax Assessor as provided for under sub-section (b) of this section, setting forth his ground of objection to the assessed value of said property as fixed by said Tax Assessor, and the Court of County Commissioners or like governing body shall, thereafter, fix a day for hearing said protest by giving to the Tax Assessor and party desiring to redeem, his agents or attorney, at least ten days written notice of the day and place of hearing said petition, and upon the hearing of said cause, the Court of County Commissioners or like governing body shall have the right to review the assessed value of said property as fixed by the Tax Assessor, and shall fix and determine the assessed value for each of the years for which taxes are due **subsequent to the year for which such land was sold to the State for taxes**, as provided for under sub-section (b) of this.

act, and the Court of County Commissioners or like governing body shall certify to the probate judge the assessed value of said land so fixed." (Underscoring ours).

You will note that this provision very carefully declares that the Tax Assessor and, upon appeal, the Court of County Commissioners shall fix the value for each of the years **subsequent to the year for which the land was sold to the State for taxes**. It, therefore, appears by the express terms of the statute to be the duty of the Tax Assessor to fix a value on redemption for each and all years subsequent to the year for which the lands were sold and likewise upon objection and appeal for the Court of County Commissioners to do likewise.

I call your attention to the quoted paragraph from an opinion to the Hon. Eugene H. Hawkins, Judge of Probate of Jefferson County, Alabama, Quarterly Report Vol. I, page 207, at page 210 in which the construction of the word "taxes" as used in redemption statutes, is thus defined:

"Except for Section 100, there would be no question but that the Legislature can do likewise, and while there is not unanimity of opinion on this, I am persuaded that reason and logic support the view that the sale of the lands to satisfy tax obligation and the purchase by the State therefor, satisfies the debt or tax liability due to the State. After the sale to the State there can be no new assessment or tax liability. While the amounts required to be paid upon redemption for the years subsequent to the sale are loosely termed annual taxes, such terminology is merely one of convenience, to describe the annual amounts which the Legislature has declared shall be paid. The fact that the Legislature has endeavored to have such amounts approximate what the annual taxes would have been if the property had been individually owned, does not convert such "amounts" into "taxes" or the annual valuations provided by the statutes into "assessments".

In answer to your third inquiry, the statute does not provide a further appeal from the action of the Court of County Commissioners and hence no appeal is allowable. The matter is purely statutory and if the Legislature did not authorize an appeal, none can be taken. The power of the Legislature in proceedings such as this is almost plenary and there is no right of appeal in tax matters except as the Legislature provides. State v. Bley, 162 Ala. 239.

But, as pointed out above, the annual amounts paid are not strictly speaking "taxes" but are annual amounts which the Legislature has provided shall be paid upon redemption, which fact, emphasizes the conclusion that the matter is purely legislative.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 28, 1936

Hon. M. W. Forman,
Judge of Probate,
St. Clair County,
Ashville, Alabama.

Persons having non-owners license required to purchase additional license to regularly drive truck or where he becomes owner of automobile under General Acts 1935, page 756 (Drivers License Act).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of August 7, 1936, in which you request my opinion as follows:

"If a person buys a non-owner license to drive a car and at a later date becomes the owner of a car, would he be required to buy a owner's license?

"If a person buys a non-owner license to drive a car and at a later date takes a job as truck driver, would he be required to buy a truck driver's license?

"Some of the holders of non-owners license do not think the law requires them to buy two licenses for the same thing in the same year, and I will thank you for your opinion on this matter."

In my opinion each of your inquiries should be answered in the affirmative.

By the so-called Driver's License Act (General Acts 1935, p. 756) every person (with certain specified exceptions not here involved) is required to procure a driver's license (Sec. 1). Section 2 of the Act contains certain provisions requiring the payment of specific fees based upon the operation of various classifications of vehicles and with regard to the ownership of same. The following notation appears on the form prepared by the Highway Department for the Driver's License:

"The above named is hereby licensed to operate a motor vehicle in accordance with Act No. 331 of 1935.

Owner () Bus () Truck () Non-Owner (x)"

Section 3 requires the licensee to have his license card in his immediate possession.

By Section 10(a) of the Act it is made a misdemeanor for any person of whom a driver's license is required to operate a motor vehicle on a public

highway without having first obtained such a license. As set forth above, a license is required of an owner of a motor vehicle and of a person who drives a motor truck. While it is true that one who purchases a 50c license may drive any vehicle, whether motor truck or private car and whether such party is the owner or not, nevertheless the text of the Act as heretofore considered precludes an adoption of the converse principle. (Cf. Commonwealth v. Magarosian, 158 N. E. 771 (Mass.)). It is therefore my opinion that before a party may operate a motor vehicle as owner, he must obtain a 50c license. He cannot avail himself of the fact that he has already purchased a 25c license as a non-owner. Nor would a person who has procured a 25c license be entitled to regularly drive a motor truck without taking out the 50c license required by Section 2, supra.

Part 17 of the opinion directed to Hon. Gaston Scott, Chairman, State Highway Commission, under date of October 5, 1935, (Quarterly Report of Attorney General, Vol. 1, pp. 17, 22) is in conflict with this opinion and it is hereby overruled.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

August 31, 1936

Hon. J. F. Smith,
Clerk of Circuit Court,
Escambia County,
Brewton, Alabama.

Where a prisoner has escaped and remains at large, the provision of Section 3750 Code of Alabama, 1923, applies, but when captured, tried and convicted, the costs should be paid as in other criminal cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 19, 1936 in which you request my opinion as follows:

"Please give me your opinion on the following: We were holding in the county jail a defendant charged with petit larceny who, before he was sentenced, escaped from the custody of the jailer. Upon the defendant's apprehension another charge was placed against him for escaping legal custody. Upon the hearing of this case the defendant plead guilty to escape and also the original charge that he was being held for.

"As clerk of the Court I rendered to the Convict Department two cost bills, one for the original offense in which I charged the defendant and the state convict department with all sheriff's fees. In the escape

case I made no charge to the convict department for the fees of the sheriff as provided for by section 3750 of the Code of 1923. The state refuses to allow sheriff's fees in the original case.

"Please give me your opinion as to whether or not the convict department should pay fees of the sheriff in the original case."

Under the facts you state above, my answer is in the affirmative. I am aware of the provision in Section 3750 Code of Alabama, 1923, which is as follows:

"No sheriff must be paid out of the state treasury any fee or allowance whatever, on account of any prisoner who has escaped from his custody; but the commissioners' court may, in their discretion, pay such fees and allowances as are payable by the county, notwithstanding the escape of the prisoner, if satisfied that such escape was not caused by the connivance or negligence of the officer having charge of him."

I am of the opinion the above quoted section refers to costs in a case where the defendant has escaped and has not been recaptured and not to a prisoner who has escaped and has been recaptured and brought to trial. As long as the escaped prisoner remains at large then the above quoted section applies, but on recapture, trial and conviction, the costs should be paid as in other cases.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

August 31, 1936

Hon. Coma Garrett, Jr.,
Probate Judge, Clarke County,
Grove Hill, Alabama.

Veterans' Exemptions—

1. Under the Acts of 1935, page 1057 veteran held not entitled to exemption of business license where business is operated through the efforts of wife.
2. Disability income from the Federal Government held not exempt from computation in arriving at a total income of veteran for exemption purposes.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of July 27th, 1936 in which you request my opinion as follows:

"We have a World War veteran in Clarke County who is fifty per cent disabled and is drawing \$50.00 per month from the Veterans Administration because of said disability. He is operating a beauty parlor under his own name, using his wife as his helper in operating the business. The veteran owns the business but his wife operates same for him. The veteran's net income from said beauty parlor is \$360.00 a year

"The veteran himself is employed by a corporation for a salary of approximately \$500.00 per year, making a total income from his business as beauty parlor operator and with his salary from said corporation \$860.00 per year. His disability income from the United States Government is \$600.00 making a net income, including the disability income which he contends should not be included in computing his net income and for purposes of net income is believed by him to be exempt, of \$1460.00 a year. His net income without the disability income is \$860.00 a year.

"Said beauty parlor is operated in the veteran's home.

"Is this veteran under the law of Alabama subject to pay a state and county license to enable him to operate his said beauty parlor "

In reply, I wish to advise that in my opinion your inquiry must be answered in the affirmative. You state in your letter that the "Veteran owns the business but wife operates same for him". You further state that the veteran himself is employed by a corporation and his disability income added to his other income from all sources amounts to \$1460.00 per year.

Under the facts as stated, it appears that the beauty parlor is not operated through the personal effort of the veteran or the personal effort of the veteran and a helper, as the veteran renders no personal service in connection with the said beauty parlor. The statute is very clear on this point. Section 2 on page 1058 of the Acts of 1935 provides as follows:

"That each such veteran who shall engage in, or carry on, any business or occupation as a means of livelihood through the personal efforts of such person or through the personal efforts of such person and not more than one employee, helper or apprentice, for which business of occupation a license tax is prescribed by the State of Alabama, shall be entitled to a license from the State to so engage in, or carry on, such business or occupation upon payment of the license tax so prescribed, less all, or such portion of, such license tax as shall not exceed Twenty five Dollars (\$25.00); provided, however, that no such person shall be entitled to the prescribed deduction or commutation in respect of more than one business or occupation for which a license tax is prescribed by law."

It further appears that the veteran's total net annual income exceeds \$1200.00. The veteran may claim no exemption in this case. Page 1060, Section 14 of the Acts provides as follows:

"Any veteran whose property both real and personal is valued at Five Thousand (\$5,000.00) Dollars or more shall be precluded from the exemptions granted herein; nor shall a veteran whose annual income

is Twelve Hundred Dollars (\$1200.00) or more be entitled to the exemptions herein granted." (Emphasis ours).

You will note that the statute does not provide for an exemption of the amount paid him as a disability income by the Federal Government, in computing his total net annual income for exemption purposes. On the contrary the statute specifically says the **total net annual income** must not exceed Twelve Hundred Dollars (\$1200.00), without naming the sources from which it may come.

Premises considered, it is my opinion that the veteran here considered under this statement of facts is not entitled to exemption of license upon the operation of said beauty parlor.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 2, 1936

Hon. Howell Turner,
Secretary of State,
Capitol.

Foreign Corporations—Required to comply with the foreign corporation laws of Alabama before operations may be begun under authority granted to operate as a general contractor by the State Licensing Board under General Acts 1935, page 721.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of August 25, 1936, in which you request my opinion as follows:

"I call your attention to S. B. 112 of the 1935 Legislature, approved September 2, 1935, copy attached.

"You will note the definition of general contractors, in Section 1, and Section 9½ pertaining to foreign corporations. Please advise me as follows. In cases where a certificate of authority (Section 9) is granted a foreign corporation as a general contractor by the State Licensing Board and the fee of \$50.00 is paid to practice general contracting under S. B. 112, is it not necessary that said corporation also comply with the foreign corporation laws of Alabama by filing a certified copy of the articles of incorporation, certificate designating statutory agent and known place of business, paying franchise tax, procuring permit for the transaction of business and paying entrance fee, in pursuance of the foreign corporation laws of Alabama? Section 9 provides for the payment of \$50.00 to the Board, and also provides for the renewal of certificate of authority

each year upon the payment of \$25.00 to the Secretary of the Board. We have been furnished with a list of persons and corporations licensed by the State Licensing Board for General Contractors and find a number of foreign corporations which were licensed and which do not appear upon your records as foreign corporations qualified for the transaction of business in Alabama."

It is my opinion that your inquiry should be answered in the affirmative. Your attention is respectfully directed to Section 232 of the Alabama Constitution of 1901, which provides as follows:

"Sec. 232. No foreign corporation shall do any business in this state without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the state. The legislature shall, by general law provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this state. Strictly benevolent, educational, or religious corporations shall not be required to pay such a tax."

This Section requires two things of a foreign corporation as a prerequisite to its doing business in the State: (1) That it have a known place of business and authorized agent, and (2) that it file with the Secretary of State a certified copy of its articles of incorporation or association. It specifically provides that the articles of incorporation or association must be filed with the Secretary of State and a compliance with this mandate is a prerequisite to its authority or right to do business in the State. Being a part of the Constitution, its requirements are unalterable, and the filing of such articles with any other officer except the Secretary of State would not constitute a compliance with the requirements.—See Biennial Report Attorney General 1918-1920, p. 544.

I further call you attention to Article 26 of the Code of Alabama, 1923 (Section 7209 et seq.), which is predicated upon Section 232 of the Constitution. *Ewart Lumber Co. v. American Cement Plaster Co.*, 9 Ala. App. 152-156, 62 So. 560.

It is my opinion, therefore, that before a foreign corporation may practice general contracting in the State of Alabama, it is necessary that it comply with the foreign corporation laws of Alabama as set forth in Sections of the Constitution and Code referred to, *supra*. The fact that certificate of authority is granted to such a foreign corporation to operate as a general contractor by the State Licensing Board will not in and of itself be sufficient. It is to be observed that all of the provisions of the Act creating the State Licensing Board (General Acts 1935, No. 297, S. 112) relate merely to the licensing and registration of contractors rather than the regulation of foreign corporations.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 3, 1936

Hon. Fred H. Price,
Clerk of Circuit Court,
Autauga County,
Prattville, Alabama.

1. Where a committing magistrate fails to commit the testimony to writing, he waives his right to collect the fee for such examination.

2. If the costs of a preliminary investigation are collected out of the defendant by execution, the costs of the magistrate and constable may be collected up to the amount of \$10.00 likewise the witness fees up to \$10.00 but if this cost is paid by the State under Section 3667 Code of Alabama 1923 only \$5.00 can be collected as costs of the magistrate and constable both together.

3. The fees allowed Justices of the Peace are the fees to be collected by the magistrate for trial on preliminary investigation.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 6, 1936, in which you request my opinion as follows:

"A defendant is charged with murder in the second degree in the complaint issued by the Judge of said Civil and Criminal Court and a warrant of arrest is also issued by said Judge and the said warrant being executed by the Sheriff. The Clerk of the Civil and Criminal Court issued eleven subpoenas for State witnesses to appear at the preliminary hearing. These eleven subpoenas are served by the Sheriff and witnesses appear at said hearing and testify at said hearing. The committing magistrate binds the defendant over to the Grand Jury without bond and issues mittimus. The testimony at said hearing was not reduced to writing and when the Grand Jury met that body had before it only the complaint and warrant however a true bill was found and the defendant was indicted, and subsequently tried in Circuit Court and sent to the penitentiary for a term of twenty-five years. In the preliminary the following was done, viz:

"By the Judge, Civil and Criminal Court:

"Issuing Complaint

Issuing Warrant of Arrest,

Issuing Mittimus.

"By the Clerk, Civil and Criminal Court.

"Issuing eleven witness subpoenas.

"By the Sheriff, Autauga County.

"Executing warrant of arrest.

Committing to jail,

Serving eleven witnesses.

"In addition, eleven State witnesses appeared before the committing magistrate at the preliminary hearing.

"If you hold that the proper papers were not sent to the Grand Jury to certify these preliminary costs, then please discuss fully the extent of the testimony that should be taken. If this testimony had been taken properly then cite the schedule of fees under which the fees for issuing complaint and issuing warrant would be taxed, then cite the schedule of fees under which the issuing of witness subpoenas would be taxed, then cite the schedule of fees under which the mittimus would be taxed. If and when said fees are collected from the convict department would you say that such fees are like 'Court Fees' and therefore fees due Autauga County. The latter for the reason that services of said committing magistrate are rendered at a stipulated compensation and there being no authority for payment of fees to a Clerk for rendering services in said preliminary.

"The Sheriff rendered the following services, viz:

"Executing warrant of arrest.

Committing prisoner to jail.

Serving eleven witness subpoenas.

"Kindly cite the schedule of fees under which each of the above would be taxed.

"The eleven State witnesses that appeared and testified at the preliminary hearing are next to be considered. Please discuss fully the schedule of fees for such witnesses. If you hold that these witnesses cannot be paid by the convict department then advise the correct procedure as to their compensation. What is desired in your opinion is a full discussion of how preliminaries may be held in the Civil and Criminal Court and conducted so that all fees may follow through and be collected on disposition of the case."

Under the facts stated by you, the committing magistrate would not be entitled to any fees as the law says the committing magistrate is not entitled to any cost unless he commits the evidence to writing and having each

individual witness sign his testimony. I call your attention to Section 3755, Code of Alabama, 1923, which is as follows:

“Costs and fees in preliminary trials.—Whenever a defendant is convicted and sentenced to the penitentiary, or to hard labor, the costs of the committing magistrate and constable on preliminary trial, both together, not to exceed ten dollars, and the fees of the State’s witnesses before the committing magistrate, not to exceed ten dollars, shall be taxed in the bill of costs in the same manner, and paid out of the same fund, at the same time and in the same way as is provided by law for the payment of other items of costs incurred by the State; but the committing magistrate shall receive no pay unless he reduces to writing the evidence taken on the preliminary trial, as required by law.”

This section means, if the cost is collected out of the defendant by execution the preliminary cost is \$10.00. But if it is not collected by execution out of the defendant and the same is paid by the State, then under Section 3667, Code of Alabama, 1923, the State will only pay \$5.00 for constables’ and magistrates’ fees both together.

This section reads in part as follows: “Costs of committing magistrate and constable or preliminary trial, both together, not to exceed \$5.00.”

The issuance of summons for witness by the clerk is without authority of law and therefore cannot form a part of the cost. See opinion of this office written July 9, 1936, to Hon. H. M. Britton, Judge of Probate, Randolph County, Book 12-A Office Edition.

Now as to the schedule of fees to be taxed in preliminary proceedings. See Section 3750, *supra*, Section 3756 and also Section 3753, Code of Alabama, 1923. The fees of the Justices of the Peace are taxed by the magistrate in preliminary proceedings. It is my opinion that witnesses receive the same fee when attending a preliminary trial as they receive when attending Justice of the Peace Court.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 3, 1936

Hon. J. F. Laseter,
Judge of Probate,
Barbour County,
Clayton, Alabama.

Judge of Probate—Not entitled to commissions on fees paid to officers under Section 288 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of May 16, 1936, in which you request my opinion as follows:

"Your opinion is respectfully requested on the following question:—

"Where the Judge of Probate receives Comptroller's warrant for the County's part and officers fees includes on lands that were sold to the State for taxes and then resold by the State after the expiration of redemption period, and the Judge of Probate under Section 288 of the 1935 Revenue Act, pays over the same to the officers authorized to receive it, what rate of commissions, if any, is the Judge of Probate entitled to deduct for his service in handling the fund and making the payment over as set forth in the section cited?

"I have a warrant in hand received from the Comptroller and as I would like to know before proceeding to disburse it, will appreciate your answer to my question as promptly as possible for you to give it."

Fees and commissions may be demanded and received only in cases expressly authorized by law. I know of no legislative authority under which compensation may be made to the Probate Judge under circumstances detailed by you above, and I am, therefore, of the opinion that no commissions are payable. See **Code Section 7255; Mobile County v. Williams**, 180 Ala. 639.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 3, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

1. Where forfeiture of appearance bond is made final, bondsmen are liable for the full amount of the bond and for the costs of collecting on forfeiture, but they are not liable for any of the costs of the criminal proceeding.

2. Where a defendant has forfeited his bond and a conditional judgment has been rendered by the court against the defendant and his sureties and is later set aside, this leaves the matter in statu quo, and the original appearance bond is in full force and effect unless the sureties on said bond procure a certified copy of the bond and arrest the defendant and deliver him to the sheriff.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 4, 1936, in which you request my opinion as follows:

"A defendant is arrested for violation of a State law and is released on bond by the Sheriff in the amount of, say, \$500.00. When the case is called for trial the defendant fails to appear and a conditional forfeiture is entered against the defendant and his bond as per Sections 3387-3391. Please advise me as follows:

"(1) If upon the hearing of the forfeiture the Circuit Court makes the forfeiture final for the full amount of the bond, viz: \$500.00, should execution be issued against defendant and bail for the \$500.00 and costs, taking into consideration the fact that the undertaking is an appearance bond and Section 7221, Code of 1923?

"(2) In the event the conditional forfeiture is set aside prior to the time the defendant is rearrested, would such action by the Court relieve the Sheriff from arresting such defendant and the defendant from making a new bond (in other words, would such bail be reinstated and binding for the defendant to appear at the next term of the Court)?"

The bond mentioned is to guarantee the appearance of defendant. If he fails to appear, and forfeiture is made final, the bondsmen are liable for the full amount of the bond, and for the costs of collecting the forfeiture, but they are not liable for any of the costs of the criminal trial or proceeding.

The collection of the bond is a civil matter. It commences to be such "from issue of the notice or scire facias against obligors", and the bondsmen are liable for the costs of collection in the same manner as in other civil suits.—*Parker Case*, 83 Ala. 269, 3 So. 552; *Hatch v. State*, 40 Ala. 718; *State v. Harrison*, 4 Ala. 671; *Dover v. State* for the use of Winston County, 45 Ala. 244.

Answering your second inquiry, I am of the opinion if the forfeiture was merely taken against the defendant and bail and subsequently the court sets aside the forfeiture and makes no further order, this places the matter in statu quo, and the bail as originally taken continues. In order for the sureties on the appearance bond to discharge themselves, they must surrender the defendant to the proper authority. This may be done in the manner authorized by Sections 3384 and 3385 of the Code of Alabama, 1923.

Therefore, my answer to your second inquiry is in the affirmative.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon Edgar Underwood,
Judge of Probate,
Franklin County,
Russellville, Alabama.

September 17, 1936

(1) License—Beauty Parlors—Where owner of shop operates Beauty Parlor without employing operator, a minimum license only required.

(2) Schedule 21 and Schedule 86 of Revenue Law of 1935 distinguished with regard to imposition of license on Beauty operators.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of September 9, 1936, in which you request my opinion as follows:

"1. Referring to schedule 21, Revenue Acts of 1935, with reference to Beauty Parlors: Is the owner of the shop liable for the \$10.00 State license and the \$4.00 operator's license for the state if she does not employ an operator, but operates the shop herself? Or will the payment of the \$10.00 state license, and of course \$5.00 for the county, give the operator a right to operate the shop without the payment of the \$4.00 State and \$2.00 County license for an operator, if she does all the work herself?

"2. Please advise the distinction to be made between Schedule 21 and Schedule 86. Schedule 86 reads as follows:

" 'For each person engaging in the business of MANICURING, HAIR DRESSING, OR ADMINISTERING FACIAL TREATMENTS, five dollars (\$5.00) provided this Schedule shall not apply to such persons employed in Beauty Shops and beauty colleges, paying the license as provided under Schedule 21.'

"Please advise the distinction to be made, and when to charge the license under Schedule 21, and when to charge the license under Schedule 86 Revenue Acts of 1935."

In my opinion, the payment of a \$10.00 State license and a \$5.00 license to the County is sufficient to permit the party mentioned in your inquiry to operate a Beauty Parlor. This office has heretofore held that Schedule 21 of the 1935 Revenue Act imposes a license upon the operation of a Beauty Parlor rather than upon the employees of such establishment. That there is imposed a minimum license of \$10.00 upon such Beauty Parlor and "a graduated license tax based upon two factors, viz: (1) the population of a city and (2) the number of employed operators, in all cases to which the minimum license tax is not applicable." (Office Edition of Attorney General, Opinion Book 6-A, page 72, opinion to Hon. Watkins M. Vaughan, Probate Judge, Dallas County, under date of August 30, 1935.)

Inasmuch as under the facts detailed in your letter the owner of the Beauty Parlor employs no operators but operates the establishment herself, it is my opinion that there would be due only the minimum license prescribed by Schedule 21, to-wit, \$10.00 for the State and \$5.00 for the County.

Answering your second inquiry, I advise you that Schedule 21 is intended to cover all Beauty Parlors operating as such and all persons operating in them, while Schedule 86 is directed at persons engaged "in the business of

manicuring, hair dressing or administering facial treatments" and not employed in a Beauty Parlor or beauty college. Thus a manicurist plying her trade, as such, in a barber shop would be subject to the license imposed by Schedule 86, as also would be an itinerant beauty operator; while a manicurist operating an established Beauty Parlor would be liable for the license tax levied by Schedule 21.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 17, 1936

Mr. Solomon Baxter, Supt.
Houston County Schools,
Dothan, Alabama.

County Board of Education.—Where School Principals are employed under contract for definite term at stipulated rate per calendar month and have performed services satisfactory to County Board of Education thereunder, it may order vouchers issued for payment of salary at prescribed rate.

Such expenses being current expenses within the meaning of Section 9, Acts 1935, page 728, County Board of Education may issue warrants or certificates of indebtedness, secured by pledge of current revenues of current fiscal year, as provided by said section.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of August 1st, enclosing copy of contract entered into between the Houston County Board of Education and six School Principals providing for their employment for an indefinite term at \$175.00 per calendar month, stating that while the Board of Education had ordered payments thereunder suspended after May 31, 1936, until further notice, it wished to pay these salaries for the months of June, July and August, and had issued vouchers for two of these months, and stating further—

"The Board of Education will have on hand on October 1, 1936, approximately \$5,000 cash balance. The Board of Education owes approximately this amount of debts incurred prior to October 1, 1935. The said debts, as I understand, under the new budget law must be paid or funded on or before October 1, 1936. The Board of Education is anxious to pay these debts and also anxious to pay its principals. The salaries for these six principals will amount to \$3,000 for the three months. This will make the Board of Education owe a deficit of approximately \$3,000. Also the Board of Education has pledged its county-wide three mill tax for P.W.A. building bonds. The entire amount of the three mill county

wide tax is not required to retire these bonds. The returns from county-wide three mill tax is approximately \$36,000 annually and the payments for the bonds for which the tax has been pledged amounts to about \$12,000 annually. This leaves the sum of approximately \$24,000 that is not required to pay the bonded indebtedness each year. The Board of Education would like for you to answer three questions if possible with the information given in the case.

"First, Can the Houston County Board of Education by proper resolution order the payment of salaries of the principals of the six consolidated schools of Houston County, Alabama, for the months of June, July and August?

"Second, Can the Board of Education of Houston County, Alabama, borrow money over and above the bonded indebtedness and pledge, so to speak, a second mortgage on the county wide three mill tax to pay the old indebtedness or pay the services of the principals of its consolidated schools?

"Third, can the Board of Education of Houston County, Alabama, borrow money over and above the bonded indebtedness to pay debts incurred prior to October 1, 1935, by using the county wide three mill tax as collateral? If the Board of Education cannot borrow money and pledge its county wide three mill tax over and above the bonded indebtedness for the payment of these debts and for principal's salaries what fund, if any, can be used to pay same?"

From the copy of the contract attached to your letter it appears that the several principals were thereby employed for an indefinite term at the rate of \$175.00 per calendar month. While the County Board of Education temporarily suspended actual payment under the several contracts by its resolution of May 29, 1936, I assume that the principals in question continued to perform such duties as may have been required of them meanwhile. Since the County Board of Education has authorized the actual payment of the respective salaries for two of the intervening months by vouchers properly executed and presented, these should be paid if there are funds available.

Section 9 of the Acts of 1935, page 728, provides the occasion and manner in which the County Board of Education may borrow money, and is as follows:

"Section 9. FUNDS MAY BE BORROWED AGAINST REVENUES OF CURRENT YEAR.—Any county board of education or any city board of education shall have authority upon the recommendation of the county superintendent of education or city superintendent of education, as the case may be, to borrow money on the credit of the school fund of that county or city to meet the salaries of teachers and other current expenses when the current funds on hand are not sufficient to meet the same, and as security therefor, to pledge the current revenues of the current fiscal year. It shall be the duty of the county board of education and the county superintendent of education or city board of education and city superintendent of education to secure such a loan if practicable, when the current funds on hand are not sufficient promptly to

pay teachers' salaries and other current expenses. All such current loans shall be due and payable not later than the end of that fiscal year. Provided, however, that the county board of education or the city board of education may issue certificates of indebtedness for payment of current expenses which are due when funds on hand are not sufficient to pay such obligations and when an adequate loan cannot be secured. Such certificates of indebtedness shall become due and payable not later than the close of the fiscal year in which they are issued and shall pledge the current revenues of that fiscal year. At no time shall loans be secured or certificates of indebtedness be issued for current expenses during any year which shall pledge school revenues of any other fiscal year. The amount which is borrowed, either by loan or certificate of indebtedness, shall at no time exceed one-third of the sum paid for all current expenses, including teachers' salaries during the preceding school year. Board of education shall have authority to pay interest at the rate of not exceeding six per cent (6%) per annum on such loans or such certificate of indebtedness as may be issued."

In my opinion your questions, so far as the facts stated permit, should be answered as follows:

First. If the principals in question have performed such services as may have been required of them under their contracts to the satisfaction of the County Board of Education, it would be proper for it to authorize and direct the payment of their salaries for the months involved.

Second. Such expenses being current expenses within the meaning of Section 9 of the Act above quoted, the County Board of Education could borrow money or issue certificates of indebtedness and for the payment of such warrants or certificates it can pledge the current revenues of the current fiscal year. This must be done strictly in conformity with the provisions and requirements of the Act.

Since it does not appear precisely when, nor for what specific purpose the amount of debts "incurred prior to October 1, 1935", were created, I cannot answer your third question formally, nor such of the other questions as relate to these debts. However, for your information I may informally point out the provisions of Act No. 94 of the Special Session of 1936, being Acts 1936, Extra Session, pages 58, et seq., wherein provision is made for the refunding prior to October 1, 1936, of certain indebtedness outstanding on September 30, 1935. The provisions of this Act are in great detail and I am sure you will have no difficulty in following strictly the procedure there outlined, insofar as it may apply to the particular facts with which you are confronted.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 19, 1936

Hon. Hunter Phillips,
Tax Assessor,
Choctaw County,
Butler, Alabama.

Taxation—Escapes—Owner Unknown—

1. In making "owner unknown" assessment both for current and "escape" assessments Assessor must give notice as required by Section 53 of the 1935 Revenue Act to person to whom such property was last assessed, and must make diligent inquiry to ascertain owner.

2. Under Section 45, it is the duty of the Assessor to make "escape" assessments of any property not included in any assessment within five years next preceding the current year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 26, 1936, requesting information as follows:

"We have several tracts of land in this county that have escaped taxation for five or more years and in a number of cases I am unable to locate the owners with a registered notice. In these cases where the last person that assessed the property can't be found is it necessary to send a registered notice? Also, advise if it is legal to make assessments on this escape property after the Books of Assessments and the Abstract of Assessments have been completed."

In answer to your first question it is my judgment that in making the owner unknown assessments both for the current year and the "escape" assessment for the previous years you should follow strictly the provisions of Section 53 of the 1935 Revenue Act. Your record should affirmatively show the making of or the attempt to make the service of the demand therein required. Of course, you should make diligent inquiry to ascertain the name of the owner of the property.

As to making the "escape" assessment, Section 45 of the Act not only authorizes the making of the assessment but requires it "whenever the Tax Assessor shall discover that any property has escaped taxation in any assessment within five years next preceeding the current year."

As to making this after the completion of your book of assessments and abstract you can add this by way of supplemental abstract.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 19, 1936

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Redemption of real property—

Land Commissioner held to be entitled to 10 per cent of the amount of tax charged against land sold for taxes and bid in by the state but not entitled to any part of officer's fees charged against said land.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion under date of August 29th, 1936, as follows:

"Under the Acts of 1935, page 916, you will note, 'The State Land Commissioner, with the approval of the Governor, may contract with a person or firm in each county to investigate the sale of real estate for taxes, bid in for the State' etc. and a contract may be made with each person with the approval of the Governor for a sum not exceeding 10 per cent.

"The State Land Commissioner made such a contract with Mr. C. L. Patterson, which contract has been approved by the Governor. We wish to know whether or not the Land Agent is entitled to receive 10 per cent, not only on the amount of the tax, but also 10 per cent of the officer's fees that will be charged against said land."

In reply I wish to advise you that, in my opinion, the Land Commissioner is entitled to 10 per cent of the amount received by the State as tax or proceeds from the sale of the real property here concerned, only.

The officer's fees are added to the amount of the tax due and can, in my judgment, constitute no part of the sum from which the Land Commissioner is to receive his commission.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 28, 1936

Hon. Jas. L. Harris,
Custodian, County School Funds,
Bullock County,
Union Springs, Alabama.

Schools—The fact that the custodian of county school funds is also an officer of the depository bank, does not effect the provisions

of the Act No. 60, H. 366 approved March 10, 1933 (General Acts 1933, page 51).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have before me a letter from Mr. G. M. Edwards, President of the First National Bank of Union Springs, Alabama, under date of August 3, 1936, in which opinion is requested as follows:

"In regard to an opinion in the bond matter of Mr. James L. Harris, Custodian, County School Funds, Bullock County, Alabama.

"In the above, I was in your office the other day and you advised me that you would secure for me an opinion on the specific case of Mr. Harris. I stated to you that Mr. Harris, as school custodian, had duly forwarded to the office of the bonding company a transcript from the minutes of the Bullock County School Board and had also forwarded an opinion from your office stating that there would be no bank depository liability where the School Board designated the bank in which the funds were to be placed. The bonding company, however, came back with the inquiry that since Mr. Harris is Assistant Cashier of the bank that even though our bank had been designated as the depository by the School Board, there might be some depository liability against the bond of Mr. Harris.

"As mentioned in person, I am enclosing herein transcript from the minutes of the Bullock County School Board showing wherein Mr. Harris was duly elected by the Board and also transcript showing wherein the First National Bank of Union Springs, Alabama, was designated as depository, and as stated, I would be very glad to have you secure for me an opinion covering the situation of Mr. Harris as being Custodian of County School Funds and also Assistant Cashier in the bank in which the funds are to be deposited."

In my opinion the fact that the Custodian of County School Funds is an officer in the bank designated as County Depository can in no way change his status with respect to his liability as such custodian. Your attention is directed to Act No. 60, H. 366, approved March 10, 1933, (General Acts 1933, Extra Session, page 51) wherein is to be found the following:

"Section 2. Upon the application of the County Tax Collectors, County Treasurers, Probate Judges, Circuit Court Clerks, and/or Registers of the Circuit Court, it shall be the duty of the Court of County Commissioners, Boards of Revenue, or other like governing body of the County to appoint a bank or trust company as a depository in which such officers may deposit monies coming into their hands as such officers; which appointment shall be by proper resolutions spread upon the minutes of such court, Board of Revenue or other governing body. Such court shall from time to time by resolution spread upon its minutes, make such requirements as may be deemed necessary for the safety of such funds as deposited, not inconsistent with the general laws of the State.

"Section 3. Upon the application of the County Treasurer of School Funds it shall be the duty of the County Board of Education of the County to appoint a bank or trust company as a depository in which said officers may deposit monies coming into their hands as such officers; which appointment shall be by proper resolutions spread upon the minutes of such County School Board. Such County School Board shall from time to time by resolution spread upon it minutes, make such requirements as may be deemed necessary for the safety of such funds so deposited, not inconsistent with the general laws of the State.

"Section 4. If any of such funds are dissipated or lost by reason of the insolvency or failure of such bank or trust company appointed as such depository as provided in Sections 2 and 3 hereof, such dissipation or loss shall not constitute a liability on the official bond of such officers nor a liability on the sureties thereon."

You will note that the statements set forth are clear and unequivocal in asserting that any dissipation or loss of funds deposited in the designated depository by reason of the insolvency or failure of such bank or trust company "shall not constitute a liability on the official bond of such officers nor a liability on the sureties thereon." There is nowhere to be found any intimation that the Legislature intended a reservation upon the rule announced when applied to custodians who were also officers of the designated depository.

Therefore, it is my opinion that there is no depository liability against the bond of the custodian, as such, even though he may be officially connected with the depository when the provisions of the foregoing cited Act have been complied with.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

Hon. Riley H. James,
Clerk, Municipal Court of Birmingham,
Third Division,
Birmingham, Alabama.

September 28, 1936

(1) Execution may issue against the plaintiff for the costs accruing at his instance immediately after the return of an execution against the defendant, marked "no property found" where he is charged with the costs.

(2) Alias execution may issue against plaintiff for costs incurred by him, where former execution for such costs was returned "no property found."

(3) Where plaintiff in original suit has garnishment instituted on judgment and fails in such garnishment, the costs of the garnish-

ment proceedings are chargeable to him and execution for the collection thereof may be issued against the plaintiff.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 23, 1936, in which you request my opinion as follows:

"The Municipal Court of Birmingham was created by an Act of the Legislature of Alabama (1915 Local Acts of Ala., p. 231).

"As Clerk of that Court, I shall greatly appreciate it if you will render an opinion on the following question:

"1. When a suit is filed in the Municipal Court, judgment rendered against the defendant, execution issued on the judgment and returned 'no property found', how long can the Clerk wait before issuing execution against the plaintiff to collect costs incurred by the plaintiff or, in other words, within what time must the Clerk issue execution against the plaintiff to collect cost incurred by the plaintiff.

"2. When a suit is filed in the Municipal Court, judgment rendered against the defendant, execution issued and returned 'no property found,' and thereupon execution is issued against the plaintiff for his costs and returned 'no property found,' can the Clerk thereafter issue alias execution against the plaintiff for costs incurred by it?

"3. When a suit is brought in the Municipal Court judgment rendered against the defendant and execution is issued against the defendant and returned 'no property found' and is also issued against the plaintiff and returned 'no property found' and thereafter the plaintiff by process of garnishment etc., unsuccessfully attempts to collect his judgment, can the Clerk again issue execution against the plaintiff in an attempt to collect the additional court costs."

Answering your first inquiry, it is my opinion that as soon as the execution is returned against the defendant marked "no property found," you may at once issue execution against the plaintiff for the costs accruing at his instance. I call your attention to Section 7805, Code of Alabama, 1923, which is as follows:

"Section 7805. When against plaintiff for his costs.—When execution against the defendant is returned 'no property found,' execution may issue against the plaintiff, in the name of the clerk or the register of the court, for all the costs created by him in obtaining his judgment."

It appears from the above section that there is no time limit as to when this may be done after the return of execution "no property found" against the defendant. Therefore, I think, as stated above, such execution may issue at once on such return against the defendant.

My answer to your second inquiry is in the affirmative. Alias Execution may issue at any time after return of the former execution showing the costs not collected up to ten years, unless revived. See Sections 7862-7863, Code of Alabama of 1928 (Michie).

My answer to your third inquiry is in the affirmative, that is as to costs of the original case. As I gather it, the costs of the garnishment suit would be against the plaintiff in the first instance as he was the unsuccessful party in this suit, and, of course, execution would be proper against him for the costs at any time.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 29, 1936

Hon. Haygood Paterson,
Sheriff, Montgomery County,
Montgomery, Alabama.

Sheriff—Elections notice constitutional amendments.

Sheriff in giving notice under Section 447 of the Code of 1923, is not required to publish such amendments in full but should give the substance or subject matter of each sufficient to clearly indicate the nature of each amendment.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 28, 1936, in which you request my opinion as follows:

"Please advise me whether or not in carrying out Section 447 of the Civil Code of Alabama I will have to set out constitutional amendments in full, or give a brief description of the subject, or in other words, does the word 'subject' in the last sentence of the above section require me to set out the constitutional amendments in detail. * * *

"I would like to have an opinion by Tuesday afternoon on this question as I have to give the notice to the printer by Wednesday."

In reply, I call your attention Section 285 of the Constitution which states in part:

"Upon the ballots used at all elections provided for in Section 284 of this Constitution the **substance or subject matter** of each proposed amend-

ment shall be so printed that the nature thereof shall be clearly indicated."

Section 447 to which you refer requires the sheriff to give notice at least 30 days before each election and concludes as follows:

"Such notice shall consist only of the date of the election and the officers to be voted for or **subjects to be voted on.**"

Section 480 of the Code following the constitutional provisions provides that the substance or subject matter of each proposed amendment shall be so printed (on the ballot) that the nature thereof shall be clearly indicated.

Section 526 providing for the counting and return of the votes on Constitutional amendments says:

"The vote on an amendment proposed to the constitution shall be counted and return made thereof as is counted and returned the vote for members of the legislature, the amendments if more than one, being designated by **substantially** the language used to designate them on the official ballot."

It appears by Section 447, that you are required to give notice of "subjects to be voted on." What meaning is to be given to the word "subjects" as there used?

In my opinion, reading all these Sections together, it is not the intention of the Legislature that when you publish the notice, you should set out the amendments in full, but it does seem that the notice should be sufficient to advise the public and particularly the qualified electors, the substance or subject matter of each sufficient to clearly indicate the nature of each amendment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

September 29, 1936

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Firearms Act—

Comptroller authorized to deliver to the Sheriff all application blanks for permits in his county required by said act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"On August 31, 1936 you rendered an opinion to Hon. Howell Turner, Secretary of State, that the issuance of forms necessary for carrying out the provisions of the Uniform Firearms Act was the duty of the State Comptroller.

"Acting under this opinion shall I furnish applications for Pistol License to the several Sheriffs only? The Sheriffs are the chief law enforcement officers of the State and even though the law provides that Probate Judges and Chiefs of Police may issue such license, should not this office issue to and hold responsible for, all pistol license forms issued?"

As I understand your letter, as an administrative measure you proposed to send all application for permits under the Uniform Firearms Act to the Sheriffs of the various counties, the Sheriffs to distribute such applications to and hold accountable to him therefor, the other officers authorized to issue such permits, and he, in turn, to account to you for all applications.

From reading the entire act, and considering its purely police nature, I think the procedure you propose is authorized, and will promote the general purposes of the act.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

SOLICITOR'S REPORTS

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abandonment	3	1	1		1					1
Abduction	1		1							
Abortion	1			1						
Abusive language	271	137	12	110	12			48	6	83
Adultery	32	9	3	20				5		4
Affray	21	6	2	12	1			2	1	3
Aiding prisoner to escape	9	8		1			5	3		
Allowing stock to run at large	1	1								
Altering gas meter	1	1		1					1	
Altering public records	2	1					1			
Arson	85	29	13	40	3			1		
Assault	33	26	2	5			3	17	2	4
Assault and battery	923	569	102	235	17		3	247	36	283
Assault and battery with weapon	16	16						8		8
Assault to murder	704	369	102	198	35		296	48		25
Assault to rape	15	12	1	2			12			
Assault to ravish	32	12	7	12	1		11			1
Assault to rob	49	34	4	9	2		31	2	1	
Assault with weapon	258	174	33	44	7		2	102	16	54
Attachment for witness	1	1								1
Attempt to bribe	1									
Attempt to commit burglary	10	7	2	1				3	3	1

Attempt to commit a felony	7	2	3	2					2		3	
Attempt to commit forgery	3	3										2
Attempt to commit grand larceny	2	2							2		1	
Attempt to commit robbery	3	3									1	
Attempt to commit sodomy	1	1									10	77
Attempt to commit distill	91	87	1	2	1						1	26
Attempt to disturb	26	26									1	
Attempt to dynamite dwelling	2	2									3	1
Attempt to escape	6	4	1	1								
Attempt to induce abortion	1	1							1			
Attempt to murder	41	17	10	11	3				11	3		3
Attempt to rape	3	3							3			
Attempt to transport liquor	1	1						1				1
Attempt to violate prohibition law												
Attempt to wreck train	1											
Bad check	67	37	4	24	2						13	24
Bastardy	146	45	14	71	16				12	24		9
Beastiality	1											
Bigamy	35	16	1	16	2				16			
Breach of the peace	6	1		5							1	
Bribery	4			4								
Burglary	1514	1229	74	168	43				1149	55	6	19
Burglary and grand larceny	331	209	26	75	21				178	17	5	9
Burglary, grand larceny and concealing stolen property	17	14	1	2					14			
Burning woods	2		1	1								
Buying stolen property	8	2		6					1	1		
Buying votes	2											
Carnal knowledge	2											
Carrier of passenger for hire without permit	87	44	7	33	3				1	42	1	2
Carrying concealed weapon	2	2										
Carrying on lottery	297	176	25	92	4				2	96	1	77
Carrying off timber	1											
Carrying pistol on land of another	1	1		1								1

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to			
						Death	Penitentiary	Hard Labor	Jail
Changing ballots	4				4				
Compounding felony	2	1			1			1	
Concealing identity	1				1				
Concealing and receiving stolen property	2	1			1				
Concealing stolen property	96	39	10	42	5		17	13	1
Condemnation	1	1							9
Corruptly bargaining for office	1			1					1
Conspiracy	8	6			2			1	3
Conspiracy to ravish	1	1					1		
Contempt	1	1							1
Contempt of court	14	3		11					3
Contempt proceedings	1	1							1
Contributing to delinquency of female child	15	7	1	7				7	
Crime against nature	9	5	1	3				5	
Cruelty to animals	9	1	3	5				1	
Cutting timber on land of another	6		2	4					
Decoying child	10	5	1	4			2	3	
Defacing church property	2			2					
Defacing dwelling	1	1							1
Defacing public property	4	1	1	2					1
Defacing tombstone	2	2						2	
Defamation	4	1		3					1
Defaulting witness	17			17					

Defective automobile	9	6	1	2					6
Defraud	1			1					
Desertion and non-support	31	12	2	17			1	10	1
Destroying fence	1			1					
Destroying land marks	2	1		1					1
Destroying lien	1		1						
Destroying personal property	8	2	3	3				1	1
Destroying public property	1			1					
Destroying mortgaged property	17	2	1	13	1		1	1	
Disposing property covered by lien	1			1					
Distilling	739	548	63	114	14		519	13	1 15
Disturbing assembly of women	1			1					
Disturbing public assembly	2	2							2
Disturbing woman in public	1		1						
Disturbing worship	70	26	14	29	1			15	4 7
Doing business without license	6			3	3				
Drawing weapon	3	2	1						2
Driving car without owner's consent	2			1	1				
Driving while intoxicated	122	60	19	42	1		1	25	3 31
Driving without license	11	4	1	6				3	1
Dynamiting fish	3			3					
Embezzlement	124	36	7	76	5		21	11	3 1
Escape	40	32		8				29	3
Failure to deliver taxi	2			2					
Failure to get gin permit	1	1							1
Failure to pay taxi fare	1				1				
Failure to redeliver hired auto	1								
Failure to report to state tax commission	4								
Failure to work public road	2	2		2	2				
False entry in bank	9	1		8			1		2
False pretense	166	59	10	83	14		22	20	4 13
False statement re-banking condition	1	1							
Fighting in public place	2		1	1					

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Forfeiture	12	9			3			1		8
Forgery	315	195	4	94	22		141	46	7	1
Fraud	1			1						
Fraudulent check	1				1					
Gaming	54	31	5	17	1				6	25
Giving worthless checks	1			1						
Grand larceny	1655	1154	139	321	41		987	161	3	3
Grand larceny and concealing stolen property	7	5		2			5			
Harboring girl for prostitution	1	1						1		
Hauling without permit	1	1								
Homicide	4	3	1				3			
Hunting wild hogs	1		1							
Hunting without license	6		3	3						
Illegal use of auto tag	1			1						
Illegal voting	2	1		1						1
Improper lights	1		1							
Improper parking	1									
Incest	19	6	3	9	1		6			
Indecent exposure	1	1								1
Injury to animal	12	4	1	6	1			3		1
Injury to motor vehicle	2	2						2		1
Injury to private building	1	1								
Injury to property	2	1		1				1		1

[illegible]

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to			
						Death	Penitentiary	Hard Labor	Jail
Operating overweight truck	7	7							7
Operating slot machines	70	41	2	26	1				2 39
Peace Proceedings	3			3					
Perjury	27	12	3	9	3		10		2
Permitting still to be operated on premises	1			1					
Petit larceny	608	403	45	143	17		3	270	41 89
Picketing	2			2					
Placing obstruction on R. R. track	1	1						1	
Placing obstruction on truck	1			1					
Placing stink bomb in theatre	2	2					2		
Playing cards	1			1					
Possession of burglary tools	12	5	1	2	4			2	3
Possession of still	106	75	7	21	3		73		2
Possession of stink bomb	1	2		1					
Possession of stolen goods	2	2					2		
Possessing whiskey	16	13	2		1			5	2 6
Practicing medicine without license	5			3	2				
Presenting firearms	42	15	4	22	1			5	10
Profane language	1			1					
Public drunkenness	317	164	33	110	10			45	6 113
Racing horse on public road	1								
Rape	43	17	11	12	3		17		
Rape and carnal knowledge	1	1					1		

Receiving deposits in insolvent bank	6				6				
Receiving stolen goods	2	1	1	1	1				1
Receiving stolen property	61	40	9	11	1		14	12	9
Reckless driving	146	69	24	50	3		1	19	8
Reform school	2	2							2
Removing mortgaged property	6	4	1	1			4		
Removing personal property	7	1	1	5				1	
Removing property covered by lien	11	3		7	1		1	1	
Repossessing property unlawfully	1			1					1
Resisting arrest	6	4		1	1			3	
Resisting officer	32	10	2	18	2		9		1
Road defaulter	3	1	2						
Robbery	364	240	39	62	23	1	236	3	
Seduction	37	3	6	28			3		
Seining	1			1					
Selling choking mule	1	1	1	1					
Selling flesh of dying animal	1			1					
Selling insurance illegally	1	1						1	
Selling mortgaged property	19	1	5	11	2		1		
Selling property covered by lien	8	3	5				3		
Sending threatening letter	2	1	1				1		
Setting off dynamite	7	3	3	1			3		
Setting up slot machine	3	1	1	1	1				1
Setting woods on fire	1	1					1		
Sheep-killing dog at large	1			1					
Shooting into dwelling	19	14	1	4			11		3
Shooting into public place	1	1							1
Shooting on public road	2	2					1		1
Slander	3			3					
Sodomy	1	1					1		
Speeding	6	2	2		2			1	1
Taking girl under 14 for marriage	1		1						
Temporary use of animal	1	1							1

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to			
						Death	Penitentiary	Hard Labor	Jail
Temporary use of auto	5	4		1				3	1
Temporary use of property	6	5	1					3	2
Threats and intimidations	1			1					
Throwing acid	3	1	2				1		
Throwing into train	1	1					1		
Trading choking mule	1		1						
Transporting	14	8	2	4			8		
Transporting liquor	133	82	7	37	7		75	5	
Transmitting venereal disease	1			1					
Trapping	2			1	1				
Trapping without license	4	4							4
Trespass	66	23	13	29	1			12	1
Trespass after warning	7	1		6					1
Unlawful assembly	1			1					
Unlawful cutting timber	1		1						
Unlawful use of auto	1	1						1	
Using car without owner's consent	25	21		4				6	3
Using property without owner's consent	1			1					
Vagrancy	100	27	8	57	8			21	4
Violating banking law	4			2	2				
Violating barber commission law	4			4					
Violating cereal beverage act	29	28	1					1	
Violating check law	1			1					27

Violating cosmetology act	17				17				
Violating election law	5				5				
Violating game law	87	24	25		33	5		8	16
Violating highway law	10		5	1	3			1	4
Violating license law	16		4	4	8			2	2
Violating marihuana law	7	3			3			2	1
Violating milk bottle law	1	1							1
Violating motor carrier act	31	13	2		14	2		1	12
Violating motor vehicle law	4		3		1			1	2
Violating narcotic law	3	3						3	
Violating plumbing law	3				3				
Violating prohibition law	2290	987	200		867	236		30	480
Violating pure food law	2				2				13
Violating revenue law	96	10	3		82	1		3	464
Violating Section 3990 of code	33	30	1		2				7
Violating Stock law	11	4			5	2			30
Violating Sunday law	23	7	16					1	3
Whitewapping	1				1			1	6

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	
						Death	Penitentiary	Hard Labor	Jail		
FIRST CIRCUIT											
Choctaw County	82	32	16	30	4		16	2		14	
Clarke County	182	97	10	65	10		34	22	2	39	
Washington County	115	43	18	41	13		10	20		13	
Totals	379	172	44	136	27		60	44	2	66	
SECOND CIRCUIT											
Butler County	140	102	12	26			57	27		18	
Crenshaw County	68	46	11	7	4		21	14		11	
Lowndes County	39	34	1	1	3	1	29	4			
Totals	247	182	24	34	7	1	107	45		29	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

THIRD CIRCUIT															
Barbour County	285	178	45	56	6	56	20	102							
Bullock County	112	68	17	27		28	31	3							6
Dale County	81	58	6	16	1	24	7	27							
Russell County	350	231	50	68	1	100	66	65							
Totals	828	535	118	167	8	208	124	3	200						
FOURTH CIRCUIT															
Bibb County	187	127	5	40	15	73	19	1	34						
Dallas County	230	149	16	54	11	95	31	9	11						
Hale County	173	155	3	14	1	72	66	6	11						
Perry County	175	108	7	47	13	63	2		42						
Wilcox County	120	73	11	33	3	55	14		4						
Totals	885	612	42	188	43	4	358	132	16	102					
FIFTH CIRCUIT															
Chambers County	133	95	13	22	3	38	25		32						
Lee County	140	100	13	23	4	84	2		13						

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Macon County	109	80	6	15	8	—	71	4	—	5
Randolph County	85	47	11	22	5	—	34	10	1	2
Tallapoosa County	75	44	8	18	5	—	33	3	2	6
Totals	542	366	51	100	25	1	260	44	3	58
SIXTH CIRCUIT										
Tuscaloosa County	398	237	18	130	13	1	92	50	10	84
Totals	398	237	18	130	13	1	92	50	10	84
SEVENTH CIRCUIT										
Calhoun County	306	194	45	65	2	—	113	28	2	51
Cleburne County	69	48	8	13	—	—	39	7	—	2

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

Talladega County	241	192	19	30	139	27	26
Totals	616	434	72	108	291	62	79
EIGHTH CIRCUIT							
Culman County	231	74	20	101	36	33	30
Lawrence County	61	39	3	15	4	32	1
Limestone County	107	73	10	21	3	45	11
Morgan County	200	101	23	64	12	95	1
Totals	599	287	56	201	55	205	21
NINTH CIRCUIT							
Cherokee County	78	36	4	36	2	24	9
DeKalb County	81	42	11	25	3	38	3
Jackson County	166	74	29	55	8	48	9
Marshall County	139	47	10	78	4	25	7
Totals	464	199	54	194	17	135	28
						4	32

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
TENTH CIRCUIT										
Jefferson County	2584	1319	230	1012	23	4	747	487	5	76
Totals	2584	1319	230	1012	23	4	747	487	5	76
ELEVENTH CIRCUIT										
Colbert County	149	108	7	23	11		49	13	5	41
Franklin County	65	48	7	8	2	1	34	5		8
Lauderdale County	139	97	24	10	8		68	13		16
Totals	353	253	38	41	21	1	151	31	5	65
TWELFTH CIRCUIT										
Coffee County	194	127	18	38	11		63	42	1	21
Pike County	203	146	27	28	2		80	28		38
Totals	397	273	45	66	13		143	70	1	59

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

THIRTEENTH CIRCUIT											
Mobile County	1161	641	50	217	253	4	362	64	200	11	
Totals	1161	641	50	217	253	4	362	64	200	11	
FOURTEENTH CIRCUIT											
Payette County	100	68	15	17			19	15		34	
Lamar County	60	36	11	13			11	3	1	21	
Marion County	224	65	25	131	3		13	17	5	30	
Walker County	380	203	51	122	4	2	82	66	10	43	
Winston County	102	61	12	28	1		19	15	3	24	
Totals	866	433	114	311	8	2	144	116	19	152	
FIFTEENTH CIRCUIT											
Montgomery County	728	491	79	151	7	8	377	51	10	45	
Totals	728	491	79	151	7	8	377	51	10	45	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	
						Death	Penitentiary	Hard Labor	Jail		
SIXTEENTH CIRCUIT											
Blount County	111	59	16	36			14	12	7	26	
Etowah County	262	123	34	93	12		65	10	16	32	
St. Clair County	49	11	3	35			2	4	1	4	
Totals	422	193	53	164	12		81	26	24	62	
SEVENTEENTH CIRCUIT											
Greene County	214	183	8	23			59	42		82	
Marengo County	175	129	14	30	2		50	11		68	
Pickens County	91	75	3	12	1		23	6		46	
Sumter County	130	94	17	14	5		58	5	1	30	
Totals	610	481	42	79	8		190	64	1	226	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

EIGHTEENTH CIRCUIT									
Clay County	62	46	6	9	1	36	5	5	
Coosa County	47	39	3	5		29	8	2	
Shelby County	218	153	20	45		107	24	22	
Totals	327	238	29	59	1	172	37	29	
NINETEENTH CIRCUIT									
Autauga County	133	86	10	35	2	63	12	11	
Chilton County	559	316	23	210	10	43	155	118	
Elmore County	240	134	27	76	3	2	88	36	8
Totals	932	536	60	321	15	2	194	203	137
TWENTIETH CIRCUIT									
Henry County	98	54	9	35		18	10	26	
Houston County	246	123	18	105		52	38	33	
Totals	344	177	27	140		70	48	59	

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
TWENTY-FIRST CIRCUIT										
Baldwin County	171	98	10	39	24		46	43	4	5
Conecuh County	133	85	5	33	10		48	29		8
Escambia County	99	52	10	25	12		30	11		11
Monroe County	136	87	7	24	18	1	48	27		11
Totals	539	322	32	121	64	1	172	110	4	35
TWENTY-SECOND CIRCUIT										
Covington County	265	164	28	60	13		41	70	3	50
Geneva County	52	42	1	9			24	14		4
Totals	317	206	29	69	13		65	84	3	54

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

TWENTY-THIRD CIRCUIT										
Madison County	799	361	156	231	51	1	106	148	3	103
Totals	799	361	156	231	51	1	106	148	3	103

GENERAL SUMMARY OF CASES IN CIRCUITS, 1934-1936—Continued

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured	
						Death	Penitentiary	Hard Labor	Jail		
CIRCUIT COURT OF AUTAUGA COUNTY											
Abusive language	1				1						
Assault and battery	7	3	1	3				1			
Assault to murder	14	12	2				6	4			
Assault to rape	1			1							
Assault to ravish	1			1							
Assault with weapon	1	1						1			
Bastardy	2				1						
Burglary	4	4					4				
Burglary and grand larceny	32	24	1	7			22	1			1
Carrying concealed weapon	4	1	1	2				1			
Carrying off timber	1			1							
Cruelty to animals	1		1								
Distilling	20	17	1	2			17				
Escape	1			1							
False pretense	6			6							
Forgery	2			2							
Gaming	2			2							
Injury to pbl. bldg.	1	1						1			
Manslaughter	1	1						1			
Murder	9	9					9				

CIRCUIT COURT OF AUTAUGA COUNTY--(Continued)

Operating car without license	1			1					
Petit larceny	3	2	1					2	
Public drunkenness	2	2							2
Rape	1	1						1	
Reckless Driving	3	2		1					2
Robbery	2	2						2	
Selling flesh of dying animal	1			1					
Shooting into dwelling	2	1		1				1	
Transporting liquor	1	1						1	
Trespass	3	1	2						1
Violating prohibition law	3	1		1	1				1
TOTALS	133	86	10	35	2			63	11

CIRCUIT COURT OF BALDWIN COUNTY

Abusive language	4	1			1	2			1
Aiding escaped convict	2	2						2	
Arson	2		1		1				
Assault and battery	11	7			4				
Assault to murder	1	1						1	1
Assault to rape	1	1						1	
Assault to rob	2	2						2	
Assault with weapon	8	5			1	2		4	1
Bad check	2				2				
Burglary	19	13	1			5		13	
Carnal knowledge	3	2			1			2	
Carrying concealed weapon	3	2	1						2
Distilling	4	4						4	
Embezzlement	5				4	1			

CIRCUIT COURT OF BALDWIN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Escape	3	3						3		
False Pretense	1				1					
Grand larceny	8	8					8			
Injury to animal	2			2						
Manslaughter	4	4					3	1		
Murder	9	2	4	3			2			
Perjury	1	1					1			
Petit larceny	18	10	1	4	3			7	3	
Possession of still	1	1					1			
Presenting firearms	1	1						1		
Public drunkenness	5	4			1			3		1
Receiving stolen property	1	1		1						
Resisting arrest	2	1			1			1		
Robbery	7	5	1	1			5			
Sheep-killing dog at large	1			1						
Setting woods on fire	1	1		1			1			
Temporary use of auto	1	1						1		
Transporting liquor	3			1	2					
Trapping	2			1	1					
Trespass	4	1	1	1	1			1		
Violating game law	5	1		4						1
Violating prohibition law	24	14		6	4			13		1
TOTALS	171	98	10	39	24		46	43	4	5

CIRCUIT COURT OF BARBOUR COUNTY

Abusive language	7	6	1					1	5
Arson	1		1						
Affray	3	3							3
Assault and battery	32	22	3	7				1	21
Assault to murder	19	7	6	5	1				1
Bigamy	1	1							
Burglary	18	15	3					14	1
Carnal knowledge	2	1		1				1	1
Carrying concealed weapon	11	8	1	2				2	6
Concealing stolen property	4	4						1	3
Cruelty to animals	2		2						
Cutting timber on land of another	1		1						
Distilling	4	2	2					2	
Disturbing worship	1								1
Driving while intoxicated	4	2	1						
Embezzlement	4	4	2	1	1			1	1
Escape from jail	8			8					
False pretense	5	5							3
Forgery	7	2		5				1	1
Giving worthless checks	2	1			1			1	
Grand larceny	1								
Incest	26	20	2	3	1			20	
Injury to public bldgs.	1			1					
Leaving scene of action	1			1					
Manslaughter	1			1					
Murder	4	2		2				2	
Operating car without tag	7	4	2		1			4	
Petit larceny	2	2							2
Public drunkenness	20	15	2	3				4	11
Rape	21	18	1	2				2	16
Reckless driving	5	2	2		1			2	
	3	3						1	2

CIRCUIT COURT OF BARBOUR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Shooting into house	1	1								1
Throwing acid	2	1	1				1			
Trespass	1		1							
Vagrancy	2	1		1						1
Violating game law	12	3	6	3						3
Violating revenue law	2		1	1						
Violating prohibition law	40	26	7	6	1		1	5		20
TOTALS	285	178	45	56	6		56	20		102

CIRCUIT COURT OF BIBB COUNTY

Abusive language	12	8		3	1					8
Assault and battery	10	8		2				1		7
Assault to murder	28	18	1	5	4		12	3		3
Bad check	4	1	1	2						1
Bastardy	1				1					
Burglary	15	9		3	3		9			
Carrying concealed weapon	4	2		1	1			2		
Distilling	49	40	1	8			40			

Embezzlement	6	2	4					1
False Pretense	2	2						1
Forgery	6	3	2	1				2
Grand larceny	10	8	1			8		3
Murder	1	1	1			1		
Petit larceny	1	1					1	
Possession of still	1	1				1		
Presenting firearms	2	1	1					
Public drunkenness	1	1						1
Reckless driving	3	1	2					1
Resisting officer	5	4		1				
Transporting liquor	6	3	3			2	4	
Trespass	1		1				1	
Using car without owner's consent	1	1						
Vagrancy	2	1		1				1
Violating prohibition law	16	11	2	2			1	1
TOTALS	187	127	5	40	15	73	19	34

CIRCUIT COURT OF BLOUNT COUNTY

Abandonment	1		1					
Abusive language	3	2		1			2	
Adultery				1				
Arson	1	1				1		
Assault and battery	10	4	2	4			1	3
Assault to murder	3	2		1		1	1	
Assault to ravish	1	1						1

CIRCUIT COURT OF BLOUNT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Attempt to distill	2	2								2
Attempt to murder	2	1		1				1		
Bastardy	4	1	3					1		
Burglary	2	2					2			
Carrying concealed weapon	3			1						
Destroying personal property	1									
Distilling	4	2		2			2			
Disturbing worship	4	4							4	
Driving while intoxicated	1	1						1		
Escape from jail	2	2						2		
False pretense	1			1						
Forgery	6	3								
Fraud	1	1		1						
Grand larceny	8	3	1	4						
Murder	1	1	1							
Operating gambling device	1	1								1
Operating slot machines	21	20		1						20
Permitting still to be operated on premises	1			1						
Petit larceny	6	1	2	3						
Presenting firearms	1	1						1		
Public drunkenness	2		1	1				1		
Reckless driving	3	2		1						
Robbery	2	2					2		2	

Selling mortgaged property	1																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
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CIRCUIT COURT OF BUTLER COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
					Death	Penitentiary	Hard Labor	Jail	
Adultery	1	1					1		
Arson	1	1				1			
Assault and battery	11	11					5		6
Assault to murder	12	7	2	3		7			
Assault and battery with weapon	11	11					5		6
Bad check	1	1		1					
Burglary	23	21		2		21			
Carnal knowledge	1	1				1			
Carrying concealed weapon	1			1					
Concealing property (stolen)	1					1			
Distilling	8	6	1	1		6			
Disturbing rel. worship	1		1						
Driving while intoxicated	2	1	1				1		
False pretense	2	1	1			1			
Forfeiture	1	1							1
Grand larceny	16	9	1	6		9			
Manlaughter	4	3		1		3			
Murder	4	3		1		3			
Petit larceny	3	3					3		
Placing obstruction on R. R.	1	1				1			
Refor. school	2	2					2		
Robbery	1	1				1			
Shooting into dwelling	1	1					1		

Shooting on public road	1	1					1
Transporting liquor	2	2					
Trespass	1	1					1
Violating Ala. Highway law	1	1					1
Violating motor veh. law	3	2			1		2
Violating prohibition law	22	11	3		8		3
Violating revenue law	1				1		
TOTALS	140	102	12	26	57	27	18

CIRCUIT COURT OF CALHOUN COUNTY

Adultery	1					1			
Arson	4	2				2			
Assault and battery	10	4	5			1		2	
Assault to murder	11	4	5			1	1	4	2
Assault to rob	1					1			
Assault with weapon	15	8	2			5		6	2
Attempt to distill	2	2							2
Bastardy	3	1							
Burglary	33	27	3			2		1	
Buying stolen property	4	1				3		27	
Carnal knowledge	3	3						1	
Concealing stolen property	2					2		3	
Crime against human nature	1	1						1	
Distilling	16	13	2			1		13	
Disturbing worship	2	1				1			1
Embezzlement	4	2	2					2	
False pretense	2					2			
Forgery	2	1				1		1	
Grand larceny	47	35	7			5		35	

CIRCUIT COURT OF CALHOUN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Fall	
Manslaughter	7	7					6			1
Murder	19	7	11	1			7			
Operating gambling device	33	33								33
Petit larceny	13	13						8	2	3
Perjury	1									
Presenting firearms	1		1							
Reckless driving	3			3						
Receiving stolen property	4	2	2				2			
Robbery	6	2	1	2	1		2			
Transporting liquor	9	7		2			7			
Violating game law	1			1						
Violating prohibition law	45	17	4	24				10		7
Violating stock law	1	1						1		
TOTALS	306	194	45	65	2		113	28	2	51

CIRCUIT COURT OF CHAMBERS COUNTY

Abusive language	3			3						
Affray	1			1						

[illegible]

CIRCUIT COURT OF CHEROKEE COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Affray	1				1					
Abusive language	2	1			1				1	
Arson	1		1							
Assault and battery	6	2		4				1		1
Assault to murder	1	1					1			
Assault with weapon	1	1						1		
Attempt to murder	1		1							
Bastardy	5	3			2		2	1		
Burglary	6	6					6			
Carnal knowledge	2	1		1			1			
Carrying concealed weapon	4	1		3				1		
Distilling	8	7		1			7			
Failure to gin permit	1	1								1
Forgery	4	1		3			1			
Gaming	7	1	1	6						
Grand larceny	5	2		3			2			
Hunting without license	2		1	1						
Murder	2	2					2			
Petit larceny	3	3						3		
Public drunkenness	2			2						
Resisting officer	1			1						
Selling mortg. prop't.	2			2						

Transporting liquor	5	2	3	2	1	2
Violating prohibition law	6	2	4	2	9	2
TOTALS	78	36	4	36	24	9

CIRCUIT COURT OF CHILTON COUNTY

Abusive language	63	30	1	31	1		12	18
Adultery	2	1	1	1	1		1	
Assault and battery	28	7	3	17	1		3	4
Assault to murder	9	6	2	2	1	1	4	1
Assault with weapon	3	2			1		2	
Bad check	13	10	3				8	2
Bastardy	4		1	2	1			
Bigamy	1	1				1		
Burglary	3	3				3		
Burglary and grand larceny	12	7	1	4		6	1	
Carrying concealed weapon	14	11	3				9	2
Decoying child	2	1	1				1	
Defective automobile	3	3						3
Distilling	18	14	1	2	1	13		1
Disturbing worship	5			5				
Driving while intoxicated	26	10		16			3	7
Driving without license	6	1		5			1	
Grand larceny	10	10				10		
Improper parking	1			1				
Manslaughter	4	2		2		1	1	
Miscegenation		2						
Murder	6	6				6		

CIRCUIT COURT OF CHILTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Non - support	1				1					
Operating overweight truck	7	7								7
Petit larceny	25	14			11			9		5
Presenting firearms	1				1					
Public drunkenness	15	9			6			3		6
Reckless driving	9	2	1		6			1		1
Resisting officer	6				6					
Selling choking mule	1				1					
Selling mortgaged property	1				1					
Shooting into dwelling	4	2	1					2		
Transporting liquor	5				4					
Trespass	5				5					
Violating carrier act	4				3					
Violating prohibition law	238	155	7		74			94		61
Violating pure food law	2				2					
TOTALS	559	316	23	210	10		43	155		118

CIRCUIT COURT OF CHOCTAW COUNTY

Abusive language	3	1	1		1					1
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Assault and battery	2	1	1							1
Assault to murder	5	3	1					1		2
Assault with weapon	6	6							1	5
Arson	1		1							
Bastardy	1	1	1							
Bigamy	1									
Burglary	9		3					2		
Carnal knowledge	1									
Carrying concealed weapons	5	2	1							2
Destroying fence	1									
Destroying of mortgaged prop.	3	1						1		
Distilling	6	4	1					3		1
Embezzlement	1									
False pretense	2	1						1		
Forgery	1	1								
Grand larceny	11	6	1					3		3
Murder	5	4						4		
Petit larceny	9	1	1							1
Robbery	1									
Shooting into dwelling	1	1								1
Temporary use personal prop.	1	1							1	
Trespass	5	1	1							1
Vagrancy	1									
Violating game law	2									
Violating prohibition law	5	1	3							1
TOTALS	90	37	17	32	4			16	2	4 15

CIRCUIT COURT OF CLARKE COUNTY

Abandonment family	2	1								1
Abusive language	9	8			1					8

CIRCUIT COURT OF CLARKE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Arson	2			2						
Assault and battery	12	10	1	1				1	1	8
Assault to murder	2		1	1						
Assault with weapon	6	5		1				3		2
Assault to rape	1		1							
Bad check	2			2						
Bastardy	3	3						2		1
Bigamy	2			2						
Burglary	14	11	1	2			11			
Carnal knowledge	1			1						
Carrying concealed weapon	7	5	1	1				3		2
Concealing stolen property	1				1					
Decoying child	3	3					2	1		
Disposing mortgaged propert.	2			2						
Disturbing public worship	2	1		1				1		
Driving while intoxicated	1			1						
Embezzlement	3	1		2			1			
Escape	3	3						3		
False pretense	2			2						
False entry in bank	9	1		8			1			
Forgery	7	2		3	2		2			
Grand larceny	15	7	1	7			7			
Hunting wild hogs	1		1							
Injury to animals	2	1			1					1

Killing a cow	1				1				
Killing a dog	1				1				
Manslaughter	3	2			1		1		1
Murder	10	9			1		9		
Operating slot machine	2						2		
Petit larceny	10	10						6	4
Resisting officer	2						2		
Rec. stolen property	2						2		
Trespass	1						1		
Trespassing after warning	1						1		
Temporary use of property		1						1	1
Violating game law	15	2			1		8	4	2
Violating motor law	1				1			1	1
Violating prohibition law	18	10					7	1	9
TOTALS	182	97	10	65	10		34	22	2 39

CIRCUIT COURT OF CLAY COUNTY

Abusive language	2	1	1	1	1
Assault and battery	2	1	1	1	1
Assault to murder	2	2			2
Assault to ravish	1	1			1
Assault with weapon	2			2	
Attempt to disill	1	1			1
Attempt to induce abortion	1	1			1
Attempt to murder	1			1	
Bigamy	1	1			1
Burglary	21	18	1	2	18
Concealing stolen property	1	1			1

CIRCUIT COURT OF CLAY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Distilling	11	8	1	1	1		8			
Grand larceny	3	2		1			2			
Petit larceny	2		1	1				1		
Reckless driving	1	1								1
Resisting arrest	1	1					2			1
Robbery	2	2					1			1
Trespass after warning	1	1						3		1
Violating prohibition law	6	4	2							
TOTALS	62	46	6	9	1		36	5		5

CIRCUIT COURT OF CLEBURNE COUNTY

Abusive language	1	1						1		
Assault and battery	2		1	1						
Assault to murder	2	2					2			
Assault with weapon	3	1	2					1		
Bastardy	1			1						

Bigamy	2	1	1	1	1	1	1	1	1
Carrying concealed weapon	1	1	1	1	1	1	1	1	1
Concealing identity	1	1	1	1	1	1	1	1	1
Destroying public property	1	1	1	1	1	1	1	1	1
Distilling	21	17	4	4	1	1	1	1	1
False pretense	1	1	1	1	1	1	1	1	1
Manslaughter	3	3	2	2	1	1	1	1	1
Murder	7	5	2	2	1	1	1	1	1
Petit larceny	4	3	1	1	1	1	1	1	1
Possession of still	13	12	1	1	1	1	1	1	1
Reckless driving	1	1	1	1	1	1	1	1	1
Seduction	1	1	1	1	1	1	1	1	1
Violating revenue law	1	1	1	1	1	1	1	1	1
Violating prohibition law	3	2	1	1	1	1	1	1	1
TOTALS	69	48	8	13	39	7	2	2	2

CIRCUIT COURT OF COFFEE COUNTY

Abusive language	6	4	1	1	1	1	1	1	1
Arson	1	1	1	1	1	1	1	1	1
Assault and battery	13	10	2	1	1	1	1	1	1
Assault to murder	14	11	2	1	1	1	1	1	1
Attempt to bribe	1	1	1	1	1	1	1	1	1
Attempt to commit burglary	1	1	1	1	1	1	1	1	1
Bad check	1	1	1	1	1	1	1	1	1
Bastardy	3	1	1	2	1	1	1	1	1
Burglary	17	10	4	3	1	1	1	1	1
Burglary and grand larceny	1	1	1	1	1	1	1	1	1
Carnal knowledge	2	1	1	1	1	1	1	1	1

CIRCUIT COURT OF COFFEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Carrying concealed weapon	3	2		1				1		1
Desertion	2	1		1						1
Disposing mortgaged property	1			1						
Distilling	5	5					5			
Driving while intoxicated	3	2	1					2		
Embezzlement and grand larceny	1	1					1			
Forgery	3			3						
Grand larceny	14	6	2	5	1		6			
Leaving scene of accident	2			2						
Manslaughter	2	2					1		1	
Murder	8	6	2				6			
Petit larceny	2			2						
Possession of still	6	5		1			5			
Public drunkenness	1	1						1		
Rape	2	1	1				1			
Reckless driving	2	1	1							1
Robbery	2	1	1							
Seduction	4	2		2			2			
Transporting liquor	3			3						
Violating game law	17	16		1			16			
Violating prohibition law	3			3						
	48	37	2	3	6			26		11

Violating revenue law	2									
TOTALS	194	127	18	38	11	63	42	1	21	

CIRCUIT COURT OF COLBERT COUNTY

Abusive language	1				1		
Affray	1				1		
Aiding prisoner to escape	1	1				1	
Arson	2						
Assault	3	2			2		
Assault and battery	6	1	1		1	2	1
Assault to murder	4	1			3		1
Assault with weapon	7	7					
Assault to rob	1	1					1
Attempt to commit burglary	1	1					1
Attempt to murder	3	2			1		
Bad check	1	1					1
Bastardy	1	1					
Burglary	14	11			2	1	1
Carnal knowledge	2	1			1		
Carrying concealed weapon	1				1		
Concealing stolen property	3	3					
Crime against nature	1				1		
Distilling	5	4	1				1
Disturbing public assembly	2	2					
Driving while intoxicated	1				1		2
Embezzlement	1	1				1	
Gaming	1		1				

CIRCUIT COURT OF COLBERT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	14	14					14			
Manslaughter	5	5					3	1	1	
Murder	5	3		1	1		3			
Non - support	1	1								1
Petit larceny	4	2	1	1				1	1	
Possession of still	3	2	1				2			
Practicing medicine without license	1									
Public drunkenness	2	2			1			1		1
Receiving stolen goods	1	1							1	
Reckless driving	3			3						
Robbery	1	1					1			
Selling mortgaged property	2			1	1					
Transporting liquor	2		1	1						
Vagrancy	2			2						
Violating cereal bev. act	29	28	1					1		27
Violating prohibition law	10	8		1	1			4		4
Violating stock law	1	1								1
TOTALS	149	108	7	23	11		49	13	5	41

CIRCUIT COURT OF CONECUH COUNTY

Abusive language	5	1	4				1	
Arson	1	4	1					
Assault and battery	7		3				3	1
Assault to murder	6	6					6	
Assault with weapon	16	11	1				10	1
Bribery	1		4					
Burglary	8		1					
Carnal knowledge	4	6	2				6	
Carrying concealed weapon	4	1	3				1	
Compounding felony	2	1	1					1
Confinement	1							
Distilling	6	3	2				3	
Disturbing assembly of women	1		1					
Grand larceny	8	6	1				6	
Killing dog	3					3		
Manslaughter	7	7					6	1
Murder	6	6					6	
Obstructing railroad track	1	1					1	
Petit larceny	6	6						
Possession of still	13	12				1	12	4
Public drunkenness	6	4	1			1	1	2
Transporting liquor	1	1						3
Trespass	2		2				1	
Vagrancy	1							
Violating license law	5		1			1		
Violating prohibition law	16	9	4			3	8	1
TOTALS	133	85	5	33	10		48	29
								8

CIRCUIT COURT OF COOSA COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	1	1						1		
Assault to murder	1			1						
Assault to ravish	1	1					1			
Bastardy	2	1	1				1			
Burglary	9	9					9			
Burglary and grand larceny	4	4					4			
Concealing stolen property	1	1					1			
Distilling	6	4	1				4			
Escape	3	3		1				3		
False Pretense	1	1					1			
Grand larceny	4	3		1			3			
Manslaughter	1	1					1			
Murder	1	1					1			
Possession of still	1	1					1			
Resisting officer	1	1					1			
Robbery	1	1					1			
Transporting liquor	1	1					1			
Violation prohibition law	8	5	1	2				3		2
TOTALS	47	39	3	5			29	8		2

CIRCUIT COURT OF COVINGTON COUNTY

Abusive language	10	4	1	5			4	
Adultery	2	1	1	1			1	
Aiding prisoner to escape	1	1					1	
Arson	3		1	1			12	8
Assault and battery	33	20	2	11			2	
Assault to murder	5	2	2	1				
Assault with weapon	3	3					3	
Attempt to burglarize	1		1					
Attempt to escape	4	3	1				3	
Bastardy	3	1		1			1	
Burglary	5	4	1				4	
Burning woods	1			1				
Carnal knowledge	2	1	1				1	
Carrying concealed weapon	3	1	1				1	
Compounding felony	1	1						
Defacing public property	1	1						1
Disturbing worship	1	1	1					
Driving while intoxicated	7	5	2				4	1
False pretense	12	9		2			4	5
Forgery	2		2					
Grand larceny	26	21	1	3			21	
Leaving scene of accident	1	1					1	
Malicious injury	5	3		2			2	1
Manslaughter	8	5	2	1			5	
Mayhem	1		1	1				
Murder	12	4	2	2			3	1
Non - support	3		1	2				
Operating slot machine	3	3						3
Perjury	1							
Petit larceny	35	28	1	6			18	10

CIRCUIT COURT OF COVINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Possession	8	3		1	4					3
Presenting firearms	3	1		2						1
Public drunkenness	2			2						
Rape	2	1	1				1			
Reckless driving	13	8	3	2				2	2	4
Robbery	1	1					1			
Selling mortg. property	1			1						
Shooting into dwelling	1	1						1		
Trespass	3	2	1						1	1
Using vehicle without owners consent	2	2						2		
Violating game law	1		1							
Violating prohibition law	31	22		9			3	9		10
Violating revenue law	2	1	1							1
TOTALS	265	164	28	60	13		41	70	3	50

CIRCUIT COURT OF CRENSHAW COUNTY

Abusive language	2		1		1					
Assault and battery	7	6	1					4		2

Assault and battery with weapon	3	3					3	2	1
Assault to murder	4	1	3				1		
Assault with weapon	3	3					1	2	1
Burglary	1	1							
Carnal knowledge	1				1				
Desertion and non-support	1	1					1		
Distilling	9	7	2				7		
Driving while intoxicated	1				1				
False pretense	1				1				
Forfeiture	3	3						1	2
Forgery	1	1						1	
Fraudulent check	1				1				
Grand larceny	6	5	1				5		
Manslaughter	5	4	1				4		
Murder	2	1			1		1		
Petit larceny	3	3						1	2
Possession of still	1				1				
Presenting firearms	1		1						
Reckless driving	1				1				
Threats and intimidations	1				1			1	
Trespass	2	1							
Transporting liquor	1	1					1		
Violating prohibition law	7	5	1		1			2	3
TOTALS	68	46	11	7	4		21	14	11

CIRCUIT COURT OF CULLMAN COUNTY									
Abduction	1		1						
Abusive language	13	4		8	1				1
Arson	1			1					3

CIRCUIT COURT OF CULLMAN COUNTY — (Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault and battery	13	5	2	5	1			2		3
Assault to murder	10	6	1	3			3	2		1
Assault with weapon	2	2						1		1
Bastardy	2			1	1					
Bigamy	2	1			1		1			
Burglary	5	5					4			1
Burglary and grand larceny	13	2	1	5	5		1		1	
Carnal knowledge	2	1		1			1			
Carrying concealed weapon	2			2						
Concealing stolen property	1	1					1			
Decoying child	1			1						
Defacing church property	2			1						
Defacing worship	1	1						1		
Embezzlement	2			2						
False pretense	4			2	1					
Forgery	6	2	1	2	1		2			
Gaming	7			7						
Grand larceny	15	4	5	4	2		3	1		
Malicious injury to animals	1				1					
Murder	9	7	1	1			7			
Petit larceny	15	3	3	3	6					3
Playing cards	1			1						

Possession and operation of still	22	10	1	11		9			1
Public drunkenness	9	2		5	2				2
Reckless driving	3	2		1					2
Resisting officer	1			1					
Robbery	1			1					
Selling mortgaged property	3								
Speeding	1			2	1				
Transporting whiskey	1	1				1			
Unlawful assembly	1			1					
Vagrancy	4	2			2		1		1
Violating prohibition law	54	13	2	28	11				12
Totals	231	74	20	101	36	33	8	3	30

CIRCUIT COURT OF DALE COUNTY

Abortion	1				1					1
Abusive language	1			1						
Adultery	1				1					
Assault and battery	16	14	1	1			1			13
Assault to murder	3			3						
Bad check	1	1					1			
Burglary	8	8				8				
Carrying concealed weapon	2	1		1						1
Concealing stolen property	1	1								1
Drawing weapon	1	1								1
Distilling	4	4				4				
Driving while intoxicated	1			1						
False pretense	2	1		1						1

CIRCUIT COURT OF DALE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	3	1	1	1	1		1			
Injury to building	1			1						
Manslaughter	5	4	1				3			1
Murder	4	4					4			
Obstructing public road	1	1	1							
Operating gambling house	1									
Petit larceny	1	1		1						
Placing obstruction on truck	3	3								3
Public drunkenness	5	5		1				3		2
Seduction	1	1		1						
Transporting whiskey	4	4					4			
Violating prohibition law	9	4	1	3	1			2		2
Violating Sunday law	1	1								1
TOTALS	81	58	6	16	1		24	7		27

CIRCUIT COURT OF DALLAS COUNTY

Abusive language	2	1		1				1	
Arson	1	1					1		

[illegible]

CIRCUIT COURT OF DEKALB COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Arson	1			1						
Assault to murder	11	4	2	5			2	1		1
Assault to ravish	2		1	1						
Assault to rob	1	1					1			
Bastardy	3	1			2			1		
Burglary	23	17	1	4	1		16	1		
Carnal knowledge	2	1	1				1			
Distilling	12	4	1	7			4			
Forgery	3	2		1			2			
Grand larceny	10	6	2	2			6			
Incest	1	1					1			
Misrepresentation	1	1					1			
Murder	4	2	2				2			
Robbery	3	2		1			2			
Seduction	4		1	3						
TOTALS	81	42	11	25	3		38	3		1

CIRCUIT COURT OF ELMORE COUNTY

Abusive language	5			5						
Adultery	2			2						

Assault and battery	10	3	3	4					1	2
Assault to murder	26	20	1	5				13	6	1
Assault to ravish	1		1							
Assault with weapon	1		1							
Bad check	1			1						
Bastardy	2		1		1					
Bigamy	1			1						
Burglary	8	6		2				6		
Burglary and grand larceny	42	29	2	10	1			28	1	
Carrying concealed weapon	7	3	1	3					2	1
Concealing and receiving stolen goods	2	1		1						1
Distilling	4	2	1	1				2		
Disturbing worship	6	3	3						3	
Driving while intoxicated	1		1							
Embezzlement	2		1	1						
Forgery	3	3						3		
Grand larceny	27	20	4	3				18	2	
Incest	1			1						
Injury to animals	1		1							
Injury to motor vehicle	2	2							2	
Manslaughter	1	1						1		
Murder	18	15		3				2	1	
Non - support	1				1					
Operating car without license	2			2						
Operating lunch counter without license	1			1						
Petit larceny	13	7	3	3					7	
Public drunkenness	4			4						
Rape	2	2						2		
Reckless driving	4	1	1	2						1
Removing personal property covered by lien	7	1	1	5					1	
Resisting officer	1			1						
Robbery	6	5		1				3	2	
Seizing	1			1						

[illegible]

CIRCUIT COURT OF ETOWAH COUNTY

Abusive language	3	1	2		1	
Altering public records	1	1			1	
Assault and battery	24	18	2	4		16
Assault to murder	12	3	4	5	3	
Assault to ravish	1		1			
Assault to rob	1		1			
Attempt to commit burglary	2	2			2	
Attempt to murder	6		3	3		
Bad check	1	1			1	1

CIRCUIT COURT OF ETOWAH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Bastardy	11	1	1	9			1			
Bigamy	1			1						
Burglary	23	18	1	1	3		18			
Carnal knowledge	2	1		1			1			
Contempt proceedings	1	1								1
Disturbing worship	4	2		2				2		
Driving while intoxicated	1		1							
Embezzlement	1			1						
False pretense	1		1							
Forgery	9	3	1	5			3			
Gaming	25	24		1						24
Grand larceny	42	16	2	18	6		16	1		
Leaving scene of accident	1	1								
Manslaughter	4	3		1			3			
Murder	10	4	3	3			4	3		
Petit larceny	6	3		3						
Presenting firearms	3		1	2						
Public drunkenness	1			1						
Rape	2		1	1						
Reckless driving	1		1							
Robbery	10	3	6	1			3			
Seduction	6		1	5						

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CIRCUIT COURT OF FAYETTE COUNTY

Abusive language	4	4						1	3
Adultery	2	2							2
Assault and battery	14	9	3	2				5	2
Assault to murder	5	3	1	1				3	4
Attempt to murder	2	2						2	
Attempt to distill	1	1							1
Bad check	2	2							2
Bastardy	3	1	1	1				1	
Burglary	2			2					
Burglary and grand larceny	3	3						3	
Carrying concealed weapon	2	2							2
Distilling	10	3	5	2				3	
Driving while intoxicated	1	1						1	
Grand larceny	7	6		1				5	
Incest	1		1						1
Manslaughter	2	2						2	
Murder	2	2							
Petit larceny	3	3						3	
Public drunkenness	7	5		2					5
Reckless driving	3	2		1					2
Receiving stolen property	3	3						3	

CIRCUIT COURT OF FAYETTE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Resisting officer	1	1								1
Seduction	4		2	2						
Transporting liquor	1	1								1
Violating game law	1			1						
Violating prohibition law	14	12		2				1		11
TOTALS	100	68	15	17			19	15		34

CIRCUIT COURT OF FRANKLIN COUNTY

Arson	3	2	1					2		
Assault to murder	5	4		1				2		
Assault to ravish	1			1						
Assault with weapon	1	1						1		
Burglary	12	9	1	1	1		7			2
Burglary and grand larceny	7	7					7			
Distilling	7	2	3	1	1		2			
Embezzlement	1			1						
False pretense	3	2		1				1		
Forgery	5	4		1			3			1
Grand larceny	1			1						

Larceny	7	7							2		5
Murder	3	3							2		
Rape	2	1						1	1		
Receiving stolen property	3	2						1	2		
Robbery	2	2							2		
Transporting liquor	2	2							1		1
TOTALS	65	48	7	8	2	1	34	5			8

CIRCUIT COURT OF GENEVA COUNTY

Abusive language	1	1									1	
Assault and battery	3	2		1							1	1
Assault to murder	1	1							1			
Assault to rape	1	1							1			
Bastardy	1			1								
Burglary	1	1							1			
Carnal knowledge	2	2							2			
Escape	9	7		2								
Forgery	1	1							1			
Grand larceny	15	13		2					13			
Manslaughter	1	1							1			
Murder	5	4							4			
Petit larceny	3	2		1							1	1
Reckless driving	2	2										2
Violating prohibition law	6	4		2							4	
TOTALS	52	42	1	9			24	14				4

CIRCUIT COURT OF GREENE COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	4	3		1				1		2
Arson	1	1					1			
Assault and battery	37	36		1				7		29
Assault to murder	18	13	2	3			11			2
Assault to rape	1	1					1			
Attempt to distill	4	4								4
Bad check	1			1						
Burglary	10	10					10			
Carrying concealed weapon	31	26	1	4				10		16
Cruelty to animals	1			1						
Distilling	10	9		1			3	4		2
Grand larceny	28	22	2	4			22			
Manslaughter	2	2						2		
Murder	13	10	2	1			10			
Petit larceny	3	3								3
Public drunkenness	1	1								1
Receiving stolen property	1	1						1		
Reckless driving	4	3	1					3		
Removing mortg. property	1	1					1			
Transporting liquor	1	1						1		
Violating prohibition law	42	36		6				13		23
TOTALS	214	183	8	23			59	42		82

CIRCUIT COURT OF HALE COUNTY

Abusive language	3	3						2	1
Adultery	1	1	1						
Arson	1			1					
Assault to murder	12	10	2				10		
Assault with weapon	14	12	1	1			11		1
Bad check	2	2							2
Burglary	8	8					8		
Carrying concealed weapon	9	8	1						
Distilling	33	31	2				31		
Disturbing worship	1	1						1	
Driving while intoxicated	1	1						1	
Escape	1	1						1	
False pretense	1		1						
Forgery	2	2					2		
Grand larceny	15	13	1	1			13		
Manlaughter	3	3					3		
Murder	5	4			1		4		
Operating slot machine	2	2							2
Perjury	1	1					1		
Petit larceny	17	15	2				13	2	
Receiving stolen property	4	4					1	1	2
Reckless driving	4	3	1					2	1
Shooting into dwelling	3	3					3		
Temporary use of vehicle	1	1					1		
Trespass	1	1					1		
Vagrancy	1	1						1	
Violating prohibition law	27	25	2				22	1	2
TOTALS	173	155	3	14	1		72	66	11

CIRCUIT COURT OF HENRY COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault and battery	10	6	2	2				2		4
Assault to murder	2	1		1			1			
Assault with weapon	1	1								1
Bastardy	2	1						1		
Burglary	9	7	1	1			6			
Burglary and grand larceny	1	1					1			1
Carrying concealed weapon	2	1		1				1		
Concealing stolen property	2	1		1						
Disposing prop. covered by lien	1			1						
False pretense	4	4								
Forgery	9			9						
Grand larceny	10	7	1	2			5			2
Manslaughter	2	1		1			1			
Murder	4	2	2				2			
Operating slot machine	2	2								2
Petit larceny	5	1	1	3				1		
Possession of still	6	3	1	2			2			1
Public drunkenness	17	15		2				3		12
Reckless driving	1	1								1
Violation of election law	1			1						
Violating prohibition law	6	3	1	2				1		2
Violating revenue law	1			1						
TOTALS	98	54	9	35			18	10		26

CIRCUIT COURT OF HOUSTON COUNTY

Adultery	1				1				
Arson	2			1	1				
Assault and battery	42	30	3	9				14	16
Assault to murder	23	15	1	7			9	5	1
Bastardy	3			3					
Bigamy	2	1	1				1		
Burglary	19	13		6			13		
Carnal knowledge	1			1					
Carrying concealed weapon	2	1		1				1	
Concealing stolen property	1			1					
Disposing mortg. property	2			2					
Disturbing worship	1			1					
Driving while intoxicated	1	1						1	
Dynamiting fish	3			3					
Embezzlement	5			5					
False Pretense	7			7					
Forgery	2			2					
Grand larceny	19	11	2	6			11		
Larceny	2	2					1	1	
Manslaughter	6	3	2	1			2	1	
Murder	18	10	4				10		
Non - support	1			1					
Operating car without license	3			3					
Operating slot machine	1	1							1
Perjury	3	1	1				1		
Petit larceny	11	6		5				5	
Possession of still	2	1		1			1		1
Presenting firearms	•								
Public drunkenness	2			2					
Rape	6	3		3					3
Receiving stolen property	2	1		1			1		
	1								

CIRCUIT COURT OF HOUSTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Reckless driving	1	1						1		
Robbery	3		1	2						
Selling ins. illegally	1	1						1		
Transporting	3	1		2			1			
Transporting liquor	4	1		3			1			
Trespass	1			1						
Vagrancy	1			1						
Violating prohibition law	38	19	2	17				8		11
TOTALS	246	123	18	105			52	38		33

CIRCUIT COURT OF JACKSON COUNTY

Abusive language	3	3							1	2
Assault	1	1					1			
Assault and battery	12	6	1	5				1		5
Assault to murder	7	1	1	3	2		1			
Assault to ravish	3			2	1					
Assault to rob	2	2					2			

Assault with weapon	2	1	1	1	1	1	1	1	1
Bastardy	6	1	1	2	2			1	
Burglary	16	10	3	3	3	10			
Carnal knowledge	1			1	1				
Carrying concealed weapon	2			2	2				
Concealing stolen property	1			1	1				
Distilling	33	17	16			17			
Disturbing worship	4	2		2	2			1	1
Driving car without owner's consent	1			1	1				
Failing to deliver taxi	2			2	2				
False pretense	1			1	1				
Fighting in public place	2	1	1						
Forgery	1			1	1				
Grand larceny	8	7	1			7			
Larceny	1	1						1	
Malicious mischief	3	2		1	1			1	1
Manslaughter	3	2	1			2			
Murder	5	5				5			
Perjury	1			1	1				
Petit larceny	5		2	3	3				
Public drunkenness	6	1		5	5				1
Trading a choking mule	1		1						
Transmitting a venereal disease	1			1	1				
Transporting	5	3	1	1	1	3			
Vagrancy	3			3	3				
Violating prohibition law	23	9		13	1			4	5
Violating stock law	1				1				
TOTALS	166	74	29	55	8	48	9	2	15

CIRCUIT COURT OF JEFFERSON COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequites	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	8	1		7				1		
Adultery	1			1						
Affray	1			1						
Aiding prisoner to escape	1	1					1			
Arson	8	4		3	1		4			
Assault and battery	184	88	27	68	1			73		15
Assault to murder	76	32	15	27	2		32			
Assault to ravish	4			4						
Assault to rob	6	4	1	1			3	1		
Attempt to commit felony	7	2	3	2				2		
Attempt to distill	1	1						1		
Attempt to dynamite dwelling	2	2						1	1	
Attempt to wreck train	1		1							
Bad check	11	2		9				2		
Bastardy	26	8		16	2			6		2
Bigamy	5	1		4			1			
Breach of the peace	6	1		5			1			
Burglary	322	286	5	31			254	32		
Burglary and grand larceny	63	22	12	29			16	6		
Carnal knowledge	2	2					2			
Carrying concealed weapon	12	2	1	8	1			2		
Concealing stolen property	53	14	8	31			6	7		1

Condemnation	1	1	1	1
Contempt	1	1		1
Contributing to delinquency of female child	15	7	1	7
Crime against nature	2	2		2
Defamation	1			1
Desertion and non-support	27	9	2	16
Defective brakes	1	1		
Disposing of mortgaged property	1			
Distilling	27	19	1	7
Disturbing worship	3		1	19
Driving while intoxicated	2		1	2
Embezzlement	34	11	2	1
False pretense	44	15	3	21
Forgery	91	64	27	7
Grand Larceny	417	302	19	96
Incest	4	2	2	162
Injury to public buildings	2	1		140
Leaving scene of accident	1		1	2
Libel	3	2		1
Loitering	2	1		2
Making false entry on bank records	9		1	1
Malicious mischief	24	11	4	9
Manslaughter	50	38	6	7
Mayhem	2		1	2
Murder	155	98	29	1
Obstructing public road	1		28	1
Obtaining funds of bank without consent	3		1	4
Operating slot machine	21	1	3	94
Perjury	2	2	20	1
Petit larceny	84	63	20	2
Placing stink bomb in theatre	2	2		2
Possession of burglary tools	1	1		1
Possession of stink bomb	1		1	1

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Presenting firearms	2				2					
Public drunkenness	25	7	3	15				5		2
Rape	6		2	4						
Receiving deposits in insolvent bank	6			6						
Reckless driving	26	6	3	16	1			3		3
Resisting arrest	1	1						1		
Resisting officer	5	3						3		
Robbery	100	71	6	22	1		71			
Sending threatening letter	2	1		1				1		
Setting off dynamite	7	3	3	1			3			
Throwing acid on person of another	1	1	1							
Transporting liquor	6	1	1	4			1			
Trespass after warning	4			4						
Using auto without consent	3	2		1				1	1	
Vagrancy	42	12	2	28				12		
Violating barber commission law										
Violating comotology law	17			17						
Violating game law	3		3							
Violating highway code	1		1							
Violating motor carrier law	8	4		4						4
Violating narcotic law	3	3					3			
Violating plumbing law	3			3						

Violating prohibition law	376	70	44	258	4	40	30
Violating revenue law	83	8	1	74		2	6
Violating Sunday law	16		16				
TOTALS	2584	1319	230	1012	23	4 747 487	5 76

CIRCUIT COURT OF LAMAR COUNTY

Abusive language	1	1						1
Assault and battery	2	1	1					1
Assault to murder	3	2	1					2
Bastardy	1			1				
Burglary	3	3						3
Carnal knowledge	2	1		1				1
Contempt of court	3	3						3
Distilling	6	4		2				4
Disturbing worship	3	1		2				1
Grand larceny	5	1	2	2				1
Non - support	1	1	1					
Petit larceny	3	3						1
Presenting firearms	2	1		1				1
Seduction	1			1				
Trespass	1	1						1
Violating game law	1		1					
Violating prohibition law	22	14	5	3				13
TOTALS	60	36	11	13		11	3	21

CIRCUIT COURT OF LAUDERDALE COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault	1	1					1			
Assault and battery	1		1							
Assault to murder	5	5					1	4		
Assault to rob	3	2		1			2			
Assault with weapon	5	5						4		1
Attempt to murder	2	2						2		
Bastardy	2	2					2			
Bigamy	1				1					
Burglary	21	19	1		1		6			13
Burglary and grand larceny	6	5			1		5			
Carnal knowledge	3	1		2			1			
Defaulting witness	17		17							
Distilling	22	17	1	3	1		17			
Forgery	7	7					5	2		
Grand larceny	12	8	3	1			7			1
Homicide	4	3	1				3			
Larceny	2	2					2			
Murder	7	6		1			6			
Perjury	1									
Petit larceny	1	1		1				1		
Rape	2	2					2			
Receiving stolen goods	1			1						

Robbery	12	8	4	8	1
Violating prohibition law	1	1			
TOTALS	139	97	24	10	8
				68	13
					16

CIRCUIT COURT OF LAWRENCE COUNTY

Arson	1				1				
Assault to murder	3	1			2			1	
Assault to ravish	1	1						1	
Bastardy	3				3				
Burglary	10	8			1	1		7	1
Distilling	18	13	2		1	2		8	1
Grand larceny	10	7			2	1		6	1
Murder	7	5	1		1			5	
Rape	1	1						1	
Robbery	3	3						3	
Seduction	2				2				
Transporting liquor	2				2				
TOTALS	61	39	3	15	4			32	1
								1	5

CIRCUIT COURT OF LEE COUNTY

Assault to murder	15	9	2	4				7	1	1
Assault to rob	1					1				
Bastardy	1				1					
Burglary	16	12	3	1				12		
Burglary and grand larceny	6	5		1				5		

CIRCUIT COURT OF LEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Carrying concealed weapon	1		1							
Distilling	34	27	1	6			27			
Driving while intoxicated	1			1						
Embezzlement	1	1					1			
False pretense	2	2					2			
Forfeiture	3	3								3
Forgery	1	1					1			
Grand larceny	13	13					13			
Incest	2			1	1					
Kidnapping	4	3	1				3			
Manslaughter	1			1						
Murder	9	6	2	1		1	5			
Petit larceny	2	1		1				1		
Rape and carnal knowledge	1	1					1			
Robbery	1	1					1			
Temporary use of auto or property	1	1								1
Throwing into train	1	1					1			
Transporting liquor	11	5	2	3	1		5			
Violating prohibition law	12	8	1	2	1					8
TOTALS	140	100	13	23	4	1	84	2		13

CIRCUIT COURT OF LOWNDES COUNTY--(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Manslaughter	2	2					2			
Murder	6	5			1	1	4			
Petit larceny	5	3	1		1			3		
Removing property under lien	1	1					1			
Robbery	2	2					2			
TOTALS	39	34	1	1	3	1	29	4		

CIRCUIT COURT OF MACON COUNTY

Abusive language	1										
Assault and battery	2	2									1
Assault to murder	5	4		1			1				
Assault with attempt to rape	1	1					1				
Assault with weapon	2	2						1			1
Attachment for witness	1	1									1
Attempt to murder	3		2		1						
Burglary	11	10					10				
Burglary and grand larceny	11	10			1		10				
Carrying concealed weapon	3	2		1					2		

	2	18	1	7	4	2	18	4	1	18	4	2
False pretense	2											
Grand larceny	30	18	1	7	4	2						
Malicious mischief	1											
Manslaughter	1	1										
Murder	12	10	1		1					10		
Petit larceny	3	2			1							2
Possession of still	4	4								4		
Robbery	6	5	1							5		
Selling mortgaged property	1		1									
Transporting liquor	7	7								7		
Violating prohibition law	2	1			1						1	
TOTALS	109	80	6	15	8					71	4	5

CIRCUIT COURT OF MADISON COUNTY

Adultery	1	1					1
Affray	7	2	5				
Arson	1	1				1	
Assault	14	9	2	3			6
Assault and battery	14	3	5	6			2
Assault to murder	33	12	5	11	5	9	3
Assault to ravish	2			2			
Assault to rob	6	4	1	1		4	
Assault with weapon	26	3	16	6	1		1
Bad check	1	1					1
Bastardy	1	1					
Bigamy	2	1	1			1	
Bribery	3		3				
Burglary	12	8	2	2		8	

CIRCUIT COURT OF MADISON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Burglary and grand larceny	66	43	3	9	11		34	7	2	
Buying votes	2			2						
Carrying concealed weapon	18	9	2	5	2			4		5
Changing ballots	4			4						
Concealing stolen property	8	1	1	2	4					1
Defacing property	2		1	1						
Defamation of character	2	1		1						1
Destroying property	3	1	1	1						1
Distilling	3	2	1					2		
Disturbing worship	1		1		2					
Driving car without owner's consent	3				1					
Driving defective car	3	2	1							2
Driving while intoxicated	10	1	3	6			1			
Embezzlement	1	1					1			
Escape from jail	7	4		3				4		
Forgery	23	7	2	10	4		6	1		
Gaming	5		3	1	1					
Grand larceny	30	18	3	9			18			1
Illegal voting	1	1								
Improper lights	1		1							
Incest	1	1					1			
Larceny	3	1		2				1		

Leaving scene of accident	5	2	2	1	
Manslaughter	1	1			
Murder	22	14	3	5	1
Obscene language	42	13	11	12	13
Obstructing highway	1	1			
Operating car on wrong side of road	1	1			
Petit larceny	40	26	5	7	
Public drunkenness	76	38	18	19	18
Reckless driving	10	3	6	1	17
Resisting officer	5		1	4	3
Robbery	2	1	1		1
Shooting across highway	1	1			
Shooting into public place	1	1			
Speeding	4	2	2		
Temporary use of property	4	3	1		1
Transporting	6	4	1	1	2
Transporting liquor	9	5	3	1	4
Trespass	10	1	3	6	2
Vagrancy	24	4	5	14	1
Violating Ala. carrier law	16	7	2	6	2
Violating game law	5	3	1	1	1
Violating highway code	5	2		3	2
Violating license law	11	4	3	4	2
Violating prohibition law	177	90	35	49	1
Whitewashing	1		1		62
TOTALS	799	361	156	231	51
					1
					106
					148
					3
					103

CIRCUIT COURT OF MARENGO COUNTY

Abusive language	2	1	1						
Assault and battery	28	23	1	4					19

CIRCUIT COURT OF MARENGO COUNTY—(Continued)

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault to murder	5	4		1			2	2		
Assault to rob	1			1						
Attempt to distill	23	21		2						21
Attempt to murder	5	4		1			1			3
Burglary	28	23	2	3			23			
Carrying concealed weapon	11	6	1	4				3		3
Concealing stolen property	1	1								1
Cruelty to animal	2	1		1				1		
Distilling	10	5	2	3			4			1
Disturbing worship	1	1								1
Embezzlement	1			1						1
Grand larceny	9	6	1	2			6			
Manslaughter	2	2					2			
Murder	14	11	2	1			10	1		
Petit larceny	7	5		2						5
Rape	1	1					1			
Reckless driving	3	2		1						2
Robbery	1	1					1			
Temporary use of animal	1	1								1
Violating prohibition law	19	11	4	2	2					11
TOTALS	175	129	14	30	2		50	11		68

CIRCUIT COURT OF MARION COUNTY

Abusive language	7	3	1	3					1	2
Arson	2			2						
Assault and battery	17	6	4	7				1	1	3
Assault to murder	3	1		2				1		
Attempt to distill	4	4								4
Bastardy	2	2							1	1
Burglary	7	4								
Carnal knowledge	1			3				3		1
Carrying concealed weapon	1		1							
Contempt of court	11			11						
Crime against nature	1			1						
Defraud	1			1						
Destroying property of another	1			1						
Disposing mortg. property	1			1						
Distilling	14	7	1	6				6	1	
Disturbing woman in public	1			1						
Disturbing worship	3			3						
Driving while intoxicated	5	1	2						1	
Failure to work public road	47	1		46					1	
Forgery	2			1						
Grand larceny	2	1	1					1		
Incest	1			1						
Murder	1	1							1	
Non - support	4	1		3						1
Operating car without license	1			1						
Operating gambling device	2	2		1						2
Peace proceedings	1			1						
Petit larceny	4	2		2					1	1
Picketing	2			2						
Presenting firearms	2	1	1							1

CIRCUIT COURT OF MARION COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Public drunkenness	6	3	2	1				1	1	1
Reckless driving	2	1		1						1
Resisting officer	1			1						
Seduction	2			2						
Selling mortg. property	1	1		1						
Trespass	4	2	1	1						2
Using prop. of another without consent of owner	1	1		1						
Violating banking law	4			2	2					
Violating prohibition law	52	22	8	22			1	9		12
TOTALS	224	65	25	131	3		13	17	5	30

CIRCUIT COURT OF MARSHALL COUNTY

Abusive language	6		1	5							
Adultery	1	1									1
Affray	1			1							
Arson	3		1	2							
Assault and battery	5	3		2					1		2
Assault to murder	4	1	1	2					1		

Assault to ravish	1	1	1	1	1	1	1	1	1
Bad check	1	1	1	1	1	1	1	1	1
Bastardy	4	1	1	1	1	1	1	1	1
Beastialty	1	1	1	1	1	1	1	1	1
Burglary	3	3	3	3	3	3	3	3	3
Carnal knowledge	3	3	3	3	3	3	3	3	3
Carrying concealed weapon	2	2	2	2	2	2	2	2	2
Desertion and non-support	1	1	1	1	1	1	1	1	1
Distilling	6	6	6	6	6	6	6	6	6
Embezzlement	1	1	1	1	1	1	1	1	1
False pretense	2	2	2	2	2	2	2	2	2
Forgery	6	6	6	6	6	6	6	6	6
Grand larceny	12	12	12	12	12	12	12	12	12
Incest	1	1	1	1	1	1	1	1	1
Injury to animals	1	1	1	1	1	1	1	1	1
Injury to public bldg.	1	1	1	1	1	1	1	1	1
Manslaughter	3	3	3	3	3	3	3	3	3
Misrepresentation	1	1	1	1	1	1	1	1	1
Murder	10	10	10	10	10	10	10	10	10
Operating gambling device	5	5	5	5	5	5	5	5	5
Petit larceny	11	11	11	11	11	11	11	11	11
Possession of still	1	1	1	1	1	1	1	1	1
Presenting firearms	2	2	2	2	2	2	2	2	2
Public drunkenness	17	17	17	17	17	17	17	17	17
Seduction	3	3	3	3	3	3	3	3	3
Selling mortgaged property	1	1	1	1	1	1	1	1	1
Transporting liquor	1	1	1	1	1	1	1	1	1
Violating prohibition law	18	18	18	18	18	18	18	18	18
TOTALS	139	47	10	78	4	25	7	1	14

CIRCUIT COURT OF MOBILE COUNTY

CHARACTER OF OFFENSE

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language.....	8	4	4	2	2			2	2	
Adultery.....	4	2	1	3						
Affray.....	3	1	1	1				1	1	
Altering gas meter.....	1	1								1
Arson.....	3	2	2		1		2			
Assault.....	3	2	2	1						2
Assault and battery.....	48	27	2	11	8			6	21	
Assault to murder.....	27	18	2	2	5		17	1		
Assault with weapon.....	20	17	3					2	15	
Assault to rape.....	3	3					3			
Assault to rob.....	5	3	2				3			
Attempt to commit burglary.....	3	3							3	
Attempt to commit forgery.....	3	3							3	
Attempt to commit robbery.....	2	2					1	1		
Bad check.....	15	14			1				14	
Bastardy.....	3			3						
Burglary.....	167	144	3	5	15		134	6	4	
Burglary and grand larceny.....	15	13	1				11		2	
Carnal knowledge.....	8	3		4	1		3			
Carrying concealed weapon.....	9	7					1	2	4	
Carrying on lottery.....	1				1					
Carrying pistol on land of another.....	1	1								1

Conspiracy	2	2							2
Disturbing worship	1	1							1
Doing business without license	6			3					
Drawing dangerous weapon	2	1	1						1
Driving while intoxicated	29	20	3	6					4 16
Driving without license	2	1		1					1
Embezzlement	6	5	1					1	1 3
False pretense	7	6		1				1	1 4
Failure to pay taxi fare	1								
Failure to report to state tax commission	4			2	2				
Failure to re-deliver hired auto	1		1						
Forgery	33	29			4			24	5
Gaming	1	1							1
Grand larceny	89	75	2	4	8			63 10	2
Hauling without permit	2	2							
Injury to private bldg.	1	1							1
Leaving scene of accident	9	6		2	1				2 4
Malicious injury to animals	2	2							2
Malicious injury to property	5	3	1		1				1 2
Manslaughter	14	8	5	1				5	3
Murder	26	22	3	1		3		19	
Operating slot machine	12	9	1	2					2 7
Perjury	7	3	2	2				1	2 2
Petit larceny	22	18	1	3					4 14
Practicing medicine without license	1				1				
Public drunkenness	8	3	1	4					3
Receiving stolen property	16	15		1				4	3 8
Reckless driving	1	1							1
Resisting officer	1	1							1
Robbery	100	70	7	7	16	1		69	
Shooting into dwelling	1	1							1
Trapping without license	4	4							4

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Trespass	8	5	1	2				5		
Using auto without consent of owner	12	12						1	11	
Vagrancy	5	3			2			1	2	
Violating Marihuana Act	7	3		1	3			2	1	
Violating prohibition law	328	9	8	145	166			4	4	1
Violation of Section 3990 of Code	33	30	1	2					30	
TOTALS	1161	641	50	217	253	4	362	64	200	11

CIRCUIT COURT OF MONROE COUNTY

Abusive language	2	2								2
Arson	2	2					2			
Assault and battery	1	1						1		
Assault to murder	8	2		2	4		2			
Assault to rape	1	1					1			
Assault with weapon	11	9		1	1			4		5
Bastardy	1	1		1						
Burglary	18	11	1	2	4		11			

Carrying concealed weapon	4	2	2	2	2	2	1
Concealing stolen property	1	1					1
Defacing tomb stone	2	2				2	
Distilling	2	2					
Disturbing worship	1		1				
Forgery	3	3				2	1
Grand larceny	14	9	3	2		9	
Injury to animal	1	1					1
Injury to property	1	1					1
Manslaughter	3	3				3	
Murder	12	9	2	1	1	8	
Petit larceny	4	2	1	1		1	1
Possession of still	9	7	1			7	
Public drunkenness	4	1	2	1		1	
Reckless driving	1		1				
Selling property covered by lien	2	1	1			1	
Selling mortgaged property	2		1				
Transporting liquor	1			1			
Violating game law	2	2					1
Violating prohibition law	22	12	2	7	1	11	1
Violating Sunday law	1	1					1
TOTALS	136	87	7	24	18	1	48
						27	11

CIRCUIT COURT OF MONTGOMERY COUNTY

Abusive language	4	3		1			1	2
Accessory of the fact	1			1				
Assault and battery	41	38	1	2			24	5
Assault to murder	51	23	9	17	2	23		9

CIRCUIT COURT OF MONTGOMERY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault to rape	1	1					1			
Assault to ravish	7	4	1	2			4			
Assault to rob	5	3	1	1			2	1		
Burglary	111	82	10	19			82			
Carnal knowledge	6	4	2				3			
Carrying concealed weapon	22	9	2	11		1		7		2
Conspiracy to ravish	1	1					1			
Crime against nature	2	1		1			1			
Distilling	1	1					1			
Disturbing worship	1	1						1		
Driving auto without brakes	1			1						
Driving while intoxicated	4	4							1	3
Embezzlement	13	4		9			4			
False pretense	16	4	1	9			3			1
Forgery	21	17		3			17			
Grand larceny	233	168	31	32			168			
Manslaughter	25	20	1	4			18			2
Murder	29	20	6	3			7			1
Non - support	9	3	4	2			12			3
Petit larceny	26	22	1	3				16	2	4
Possession of burglary tools	1			1						

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CIRCUIT COURT OF MORGAN COUNTY

Altering public records	1			1			
Arson	7	3	1	3		2	1
Assault to murder	28	9		17	2	8	
Assault to rob	4	4		4		4	1
Bigamy	2	1		1		1	
Burglary	40	23	4	12	1	23	
Carnal knowledge	5	2	1	2		2	
Concealing stolen property	1			1			
Distilling	10	7	1		2	7	
Embezzlement	4			4			

CIRCUIT COURT OF MORGAN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
False pretense	3		1	1	1					
Forgery	10	6		1	3		6			
Grand larceny	32	19	2	11			19			
Larceny from a person	3	2			1		2			
Manslaughter	2		2							
Murder	18	10	3	5		1	9			
Possession of still	2	1	1				1			
Robbery	7	3	2	2			3			
Seduction	2		2							
Selling mortgaged property	1		1							
Violating prohibition law	18	11	2	3	2		8			3
TOTALS	200	101	23	64	12	1	95	1		4

CIRCUIT COURT OF PERRY COUNTY

Assault with weapon	9	8		1						8
Assault to murder	12	5	2	4	1		5			
Attempt to commit burglary	1			1						

Attempt to escape lawful custody	2	1	1	1	1	1	1	1	1	1
Burglary	22	21	1	1	1	1	1	1	21	1
Burglary and grand larceny	9	1	1	8	1	1	1	1	1	1
Carrying concealed weapon	11	7	1	3	1	1	1	1	11	7
Distilling	11	11	1	1	1	1	1	1	1	1
Embezzlement	2	2	1	1	1	1	1	1	1	1
False pretense	2	1	1	1	1	1	1	1	1	1
Forgery	2	1	1	1	1	1	1	1	1	1
Grand larceny	16	13	1	2	1	1	1	1	13	1
Illegal use of auto tax	1	1	1	1	1	1	1	1	1	1
Manslaughter	3	3	1	1	1	1	1	1	3	1
Murder	11	6	1	3	1	1	1	1	5	1
Operating defective car	1	1	1	1	1	1	1	1	1	1
Operating vehicle lic. tag	1	1	1	1	1	1	1	1	1	1
Petit larceny	3	3	1	1	1	1	1	1	1	3
Possession of still	1	1	1	1	1	1	1	1	1	1
Presenting firearms	2	1	1	1	1	1	1	1	1	1
Public drunkenness	4	1	1	3	1	1	1	1	1	1
Receiving stolen property	2	2	1	1	1	1	1	1	1	2
Reckless driving	3	2	1	1	1	1	1	1	1	2
Removing property covered by lien	9	1	1	7	1	1	1	1	1	1
Robbery	2	2	1	1	1	1	1	1	2	1
Trespass	2	1	1	1	1	1	1	1	1	1
Using car without owners consent	3	1	1	2	1	1	1	1	1	1
Violating game law	4	3	1	3	1	1	1	1	3	3
Violating prohibition law	19	7	1	6	5	1	1	1	7	7
Violating Sunday law	5	5	1	1	1	1	1	1	5	5
TOTALS	175	108	7	47	13	1	63	2	42	42

CIRCUIT COURT OF PICKENS COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault and battery	13	10		3				1		9
Assault to murder	2	2					2			
Attempt to distill	16	15	1					2		13
Burglary	13	9	2	2			9			
Carrying concealed weapon	3	1		2						1
Disposing mortgaged propert.	2	2		2						
Distilling	14	14					5	2		7
Grand larceny	6	4		2			4			
Murder	3	3					3			
Petit larceny	1	1						1		
Public drunkenness	4	4								4
Temporary use of car	1	1		1						
Violation of prohibition law	13	12			1	1				12
TOTALS	91	75	3	12	1		23	6		46

CIRCUIT COURT OF PIKE COUNTY

Abusive language	2	2						1		1
Aiding an escape	1	1					1			

CIRCUIT COURT OF PIKE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Unlawful use of auto	1	1						1		
Violating game law	4	4						4		
Violating prohibition law	37	27	3	6	1			8		19
Violating stock law	5			5						
Violating revenue law	3	1		1	1			1		
TOTALS	203	146	27	28	2		80	28		38

CIRCUIT COURT OF RANDOLPH COUNTY

Assault	2	2							2	
Assault and battery	2			2						
Assault to murder	1		1							
Assault with a weapon	2	2						1		1
Attempt to murder	9	3	3	2	1		3			
Bastardy	3	1		2				1		
Burglary	1	1					1			
Burglary and grand larceny	11	8	2	1	1		8			
Buying stolen property	1			1						
Crime against nature	1		1							

	17	6	11	3	3	3
Distilling						
Embezzlement	2		2			
Forfeiture	1			1		
Grand larceny	9	8	1		8	
Murder	9	9			8	1
Petit larceny	4	4				1
Possession of still	4	3	1		3	
Receiving stolen property	1		1			
Robbery	3		3			
Violating prohibition law	1			1		
Violating stock law	1			1		
TOTALS	85	47	11	5	34	10
			22			1
						2

CIRCUIT COURT OF RUSSELL COUNTY

Abandonment	1				1		
Abusive language	2	2					2
Adultery	4		1		3		
Arson	9	8			1		8
Assault and battery	22	19	1		2		8
Assault to murder	28	15	10		3		15
Bad check	3	3					
Bigamy	1	1					1
Burglary	24	15	3		6		15
Bastardy	1				1		
Carnal knowledge	4	4					4
Carrying concealed weapons	12	11			1		5
Concealing stolen property	2	2					2
Cruelty to animals	1				1		

CIRCUIT COURT OF RUSSELL COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Destroying land marks.....	1	1								1
Disposing of mortgaged prop.....	4	1	1	1	1			1		
Distilling.....	16	14	2				14			
Disturbing rel. worship.....	1	1						1		
Driving while intoxicated.....	2		1	1						
Embezzlement.....	7	2	1	4			1	1		
Escape from jail.....	2	2						2		
False pretense.....	3	3					2			1
Forgery.....	1	1					1			1
Gaming.....	6	6						5		1
Grand larceny.....	34	20	6	8			20			
Making threats.....	1	1	1							1
Leaving scene of action.....	1	1								1
Manslaughter.....	8	6	2				4	1		1
Mayhem.....	1	1					1			
Murder.....	13	5	5	3			5			
Non - support.....	3			3						2
Operating slot machine.....	4	2	1	1						
Perjury.....	1		1							
Petit larceny.....	10	6	2	2				6		
Possession of still.....	1	1					1			1
Presenting fire arms.....	2	1		1						

Public drunkenness	4	2		2				2
Receiving stolen property	1	1					1	
Reckless driving	2	1	1					1
Removal of property covered by lien	1	1						1
Resisting arrest	2	1		1				
Resisting officer	1							
Robbery	4	3	1				3	
Selling property covered by lien	1	1					1	
Shooting into dwelling	3	1		2				1
Taking under 14 for marriage	1		1					
Transporting whiskey	3	1		2			1	
Using car without consent	2	2						1
Violating highway law	1	1						1
Violating prohibition law	88	62	8	18				25
TOTALS	350	231	50	68	1		100	66
								65

CIRCUIT COURT OF ST. CLAIR COUNTY

Abusive language	3			3		
Aiding prisoner to escape	1	1			1	
Assault and battery	6	2		4		
Assault to murder	1	1			1	1
Assault with a weapon	1	1				1
Bastardy	1		1			
Burglary	3	1		2	1	
Burglary and grand larceny	2	1		1		1
Carnal knowledge	1			1		
Corruptly barg. for office	1			1	1	
Distilling	1			1		

CIRCUIT COURT OF ST. CLAIR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	7	2			5			1		1
Injury to property	1				1					
Murder	3				3					
Operating gambling device	1	1								1
Petit larceny	2		1		1					
Public drunkenness	2	1			1					1
Seduction	2				2					
Vagrancy	3				3					
Violating prohibition law	7		1		6					
TOTALS	49	11	3	35			2	4	1	4

CIRCUIT COURT OF SHELBY COUNTY

Abusive language	4	3			1			2		1
Arson	1	1					1			
Assault and battery	2	2						1		1
Assault to murder	10	4	3	3			4			

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CIRCUIT COURT OF SUMTER COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	2	2								2
Assault and battery	10	8	1	1				2		6
Assault to murder	10	6	2	2			4			2
Attempt to aid escape	2	1		1						1
Attempt to distill	3	3								3
Attempt to rape	1	1					1			3
Burglary	26	22		1	3		21			1
Carrying concealed weapon	7	5		2				1		4
Cruelty to animals	1			1						
Decoying child	1			1						
Distilling	19	15	1	3			15			
Failure to work public road	2	2								2
Forgery	4	4					4			
Grand larceny	4	3			1					
Murder	8	8					8			
Perjury	4	1		2	1		1			
Petit larceny	1		1							
Public drunkenness	3	2	1							2
Rape	2	1	1				1			
Shooting on public road	1	1								1
Violating prohibition law	19	9	10					2	1	6
TOTALS	130	94	17	14	5		58	5	1	30

CIRCUIT COURT OF TALLADEGA COUNTY

Abusive language	2	1	1	1	1	1	1
Arson	2		2				
Assault	7	7				7	
Assault to murder	15	10	3	2	10		
Assault to ravish	3	1		2	1		
Assault with weapon	15	13		2		6	7
Bigamy	1	1			1		
Burglary	50	45	2	3	45		
Burning wood	1		1				
Carnal knowledge	7	5	1	1	4	1	
Carrying concealed weapon	2	2				1	1
Decoying child	2	1		1		1	
Destroying lien	1		1				
Distilling	35	33		2	33		1
Driving while intoxicated	1	1			1		
Forgery	2	2			2		
Grand larceny	36	33		3	33		
Incest	1			1			
Indecent exposure	1	1					1
Murder	4	1	3		1		
Manslaughter	4	3	1		2	1	
Operating gambling device	1	1					1
Petit larceny	10	8	1	1	1	5	2
Public drunkenness	3	1		2			1
Presenting firearms	2	1		1		1	
Profane language	1			1			
Reckless driving	3	2	1			2	
Robbery	4	4			4		
Seduction	1	1			1		
Selling property under lien	2			2			

CIRCUIT COURT OF TALLADEGA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Shooting into dwelling	1	1								1
Transporting liquor	2	1		1			1			
Trespass	1			1						
Un. cutting timber	1		1							
Vagrancy	1		1							
Violating game law	1			1						
Violating prohibition law	15	12	1	2				1		11
TOTALS	241	192	19	30			139	27		26

CIRCUIT COURT OF TALLAPOOSA COUNTY

Assault and battery	5	2	1	2						2
Assault to murder	3	3					1			2
Assault with weapon	1	1						1		
Attempt to murder	2			2						
Attempt to rob	1	1					1			
Bastardy	2	1			1			1		
Burglary	7	7					7			

Burglary and grand larceny	4	3			1			3		
Carnal knowledge	1				1					
Carrying concealed weapon	2	1	1							1
Defacing dwelling	1	1								1
Distilling	15	10	1		2			10		
Driving while intoxicated	2	2								2
Forgery	1	1							1	
Grand larceny	10	5	1		3			5		
Leaving scene of accident	1	1							1	
Manslaughter	2	2						2		
Murder	4	2	1		1			2		
Petit larceny	1				1					
Public drunkenness	3	1	1		1				1	
Rape	1									
Reckless driving	1				1					
Selling mortgaged property	1		1							
Trespass after warning	1				1					
Violating prohibition law	3		1		2					
TOTALS	75	44	8	18	5			33	3	2

CIRCUIT COURT OF TUSCALOOSA COUNTY

Abusive language	1				1					
Assault to murder	24	2	1	21				2		
Arson	12		1	11						
Assault and battery	34	25	2	7				6	5	14
Assault to ravish	2	2						2		
Assault to rob	3	3						3		

CIRCUIT COURT OF TUSCALOOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault with weapon	13	7	2	4				6		1
Attempt to commit sodomy	1	1						1		1
Attempt to distill	15	14			1			7		7
Attempt to disturb	26	26								26
Attempt to transport whiskey	1	1								1
Attempt to violate pro. law	1	1		1						1
Bastardy	3	2		1				1		1
Bigamy	1			1						
Burglary	26	15	1	9	1		15			
Burglary and grand larceny	11	10	1				10			
Burglary, grand larceny, and C. S. P.	17	14	1	2			14			
Carrying concealed weapon	3	2	1				1			1
Concealing stolen property	7	5		2			2	3		
Conspiracy to commit misdemeanor	6	4			2			1		3
Cutting timber on land of another	2			2						
Decoying child	1			1						
Distilling	18	11	2	5			11			
Disturbing worship	1			1						
Driving while intoxicated	2	1		1						1
Driving without license	2	2						1	1	
Embezzlement	4	2		2			1	1		
False pretense	4	1	1	2				1		

Forgery	16	10	5	1	5	3	2
Grand larceny	18	8	1	7	8		
Grand larceny and C. S. P.	7	5	2	2	5		
Hunting without license	1	1	1	1		1	
Injury to animal	1	1					1
Leaving scene of accident	5	4	1	1	3	2	2
Manslaughter	7	7			3	2	
Murder	9	5	2	1	1	4	
Non - support	1		1	1			
Obstructing public road	4		4	4			
Petit larceny	24	17	5	2	1	8	7
Practicing medicine without license	2		2				
Public drunkenness	11	9	2	2			9
Rape	2		2				
Reckless driving	4	2	1	1		1	1
Repossessing property unlawfully	1		1				
Sodomy	1	1		1	1		
Speeding	1						
Transporting liquor	1	1			1		
Trespass	1	1					1
Vagrancy	7	3	3	1		3	
Violating game law	3	2	1				2
Violating prohibition law	30	11	1	18		5	6
TOTALS	398	237	18	130	13	92	84

CIRCUIT COURT OF WALKER COUNTY

Abusive language	19	11	1	7		5	6
Adultery	2	2				1	1

[illegible]

CIRCUIT COURT OF WASHINGTON COUNTY

[illegible]

CIRCUIT COURT OF WASHINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Allowing stock to run at large	1		1							
Assault and battery	8	5	1	1	1			3		2
Assault to murder	2		1	1						
Assault with weapon	7	3	2		2			2		1
Bad check	2	1		1						1
Bastardy	1			1						
Bigamy	1			1						
Burglary	7	6		1			6			
Carnal knowledge	1				1					
Carrying concealed weapon	1				1					
Defacing public building	1			1						
Disposing mortgaged property	2			2						
Distilling	2			2						
Disturbing public worship	2	1	1					1		
Escape	2									
False pretense	4	2	2							2
Forgery	2			2						
Injury to animals	1			1						
Manslaughter	4	4					4			
Murder	2									
Petit larceny	7	3	1		1			3		
Possession of burglary tools	2	1	1					1		

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CIRCUIT COURT OF WILCOX COUNTY

Abusive language	1	1				1
Assault and battery	1		1			
Assault to murder	12	5	7			3
Assault with weapon	1	1				1
Attempt to burglarize	1		1			
Bastardy	2			2		
Burglary	19	15	1	3		15
Carrying concealed weapon	6	5	1	1		5
Defective car	1			1		
Distilling	19	16	3	3		16
Disturbing worship	1		1	1		
Embezzlement	2		2			
False pretense	1	1				1
Forfeiture	2	2				
Forgery	1				1	

CIRCUIT COURT OF WILCOX COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	15	8	1	6			8			
Murder	12	9	3				9			
Petit larceny	2	1		1				1		
Rape	1				1					
Receiving stolen property	2		2							
Reckless driving	1			1						
Robbery	2	1	1					1		
Transporting liquor	4	3	1				3			
Using car without owner's consent	2	1		1				1		
Violating prohibition law	9	4	1	3	1			4		
TOTALS	120	73	11	33	3		55	14		4

CIRCUIT COURT OF WINSTON COUNTY

Abusive language	4	2		2						2
Arson	1		1							
Assault and battery	20	12		8				5		7

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I N D E X

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